(22,822)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 72.

THE RIO GRANDE WESTERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THOMAS B. STRINGHAM AND ELLA STRINGHAM, HIS WIFE; AMMON B. STRINGHAM AND MARY STRINGHAM, HIS WIFE; FRANCIS H. STRINGHAM AND LAURA STRINGHAM, HIS WIFE; CLARENCE E. STRINGHAM AND IDA STRINGHAM, HIS WIFE; KATHERINE STRINGHAM, MARY J. STRINGHAM, AND JOHN STRINGHAM.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 14, 1913.

a In the District Court of the Third Judicial District in and for Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,
v.
THOMAS B. STRINGHAM et al., Defendants and Respondents.

Transcript on Appeal.

Appearances:

Messrs. Van Cott, Allison & Riter, Attorneys for Plaintiff and Appellant.

Messrs. A. A. Duncan and N. W. Sonnedecker, Attorneys for Defendants and Respondents.

Filed and transmitted to the Supreme Court this 25th day of October, A. D. 1909.

[SEAL.] MARGARET ZANE WITCHER, *Clerk*,
By OLIVIA M. BURT, *Deputy Clerk*.

Filed October 2, 1909.

H. W. GRIFFITH,
Clerk Supreme Court, Utah.

1 In the District Court of Salt Lake County, State of Utah.
(Chancery Division.)

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Complaint.

The plaintiff complains and alleges:

1. That it now is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Utah.

2. That it now is, and for a long time hitherto has been, the owner, in fee simple, of the following described tract of land, situated in Salt Lake County, State of Utah:

A strip of land 200 feet wide, being 100 feet wide on each side of the center line of the Bingham Branch of the Rio Grande Western Railway as the same is now constructed over and across the

Curtis Placer Mining Claim, U. S. Lot No. 38, Lower Placer District, in the south half of the northeast quarter of Section 18, and the southwest quarter of the northwest quarter of section 17, Township three, south, Range two west, Salt Lake Base and Meridian.

Said center line is more particularly described as follows to-wit:

Beginning at a point on the easterly end line of the said Curtis Placer Mining Claim north 21 deg. 15 Min. west 68 feet more or less, from corner No. 2 of said claim, said point also being 708 feet, more or less, north and 361 feet, more or less, east of the west quarter Corner of said section 17; thence north 80 deg. 59 min. west 427 feet, more or less, thence on a 0 deg. 40′ curve to the left 862.5 feet, thence north 86 deg. 44 min. west 1,077 feet, more or less, to a point on the westerly end line of the said mining claim, said point being 1,992 feet, more or less, west and 925 feet, more or less, north of the east quarter corner of said section 18.

2 3. That the plaintiff claims title in fee to the said premises, and the defendants claim an estate or interest therein adverse to the plaintiff.

4. That the claim of the defendants is without any right whatever, and that the defendants have not any estate, right, title or interest whatever in said land or premises, or any part thereof.

Wherefore the plaintiff prays:

1. That the defendants may be required to set forth the nature of their claim, and that all adverse claims of the defendants may be determined by a decree of this court.

2. That by said decree it be declared and adjudged that the defendants have no estate or interest whatever in or to said land and premises, and that the title of plaintiff is good and valid.

3. That the defendants be forever enjoined and debarred from asserting any claim whatever in or to said land and premises adverse to the plaintiff, and for such other relief as to this honorable court shall seem meet and agreeable to equity, and for costs of suit.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff.

STATE OF UTAH,
County of Salt Lake, ss:

C. A. Blake, being first duly sworn, deposes and says: I am the Division Engineer of the plaintiff herein, and make this verification for and on its behalf. I have read the foregoing complaint, and the same is true to the best of my knowledge, information and belief.

C. A. BLAKE.

Subscribed and sworn to before me this 17th day of December, 1906.

[SEAL.] J. R. HAAS,
Notary Public.

(Endorsed on back:) 8745. The default of the defendants Francis H. Stringham, Laura Stringham, Clarence E. Stringham, Ida Stringham and John Stringham, for failure to answer com-

plaint, was duly entered June 20, 1908, as shown by default certificate attached hereto. Margaret Zane Witcher, Clerk, by Fred C. Bassett, Deputy. Dated Oct. 18, 1909. Complaint filed Dec. 17, 1906.

3 STATE OF UTAH,
County of Salt Lake, ss:

SHERIFF'S OFFICE.

I hereby certify that I received the within and hereunto annexed summons on the 17th day of December, A. D. 1906, and served the same upon Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, his wife, Francis H. Stringham and Laura Stringham, his wife, Clarence E. Stringham, the within named defendants by delivering to and leaving with each of said defendants, personally, in the County of Salt Lake, State of Utah, on the 18th day of December, A. D. 1906, a true copy of said summons, attached to a true copy of the complaint referred to in the said summons.

On the defendant, Ida Stringham, by delivering to and leaving with Clarence E. Stringham, her husband, at the usual place of abode of said defendant, in the County of Salt Lake, State of Utah, on the 18th day of December, A. D. 1906, a true copy of said summons, attached to a true copy of the complaint referred to in said summons.

On the defendant, Katherine Stringham, by delivering to and leaving with Mary Stringham, a suitable person over the age of 14 years, at the usual place of abode of said defendant, in the City and County of Salt Lake, State of Utah, on the 19th day of December, A. D. 1906, a true copy of said summons, attached to a true copy of the complaint referred to in said summons.

On the defendant, Mary J. Stringham, by delivering to and leaving with, said defendant, personally, in the City and County of Salt Lake, State of Utah, on the 19th day of December, A. D. 1906, a true copy of said summons, attached to a true copy of the complaint referred to in said summons.

4 I further certify that at the time of service of summons on the defendants, as aforesaid, I endorsed on the copies of the summons, so served, the date and place of service, signed my name and added my official title thereto.

I further certify that after due search and diligent inquiry I have been unable to find the within named defendant, John Stringham, in the County of Salt Lake, State of Utah, and I am reliably informed and firmly believe that said John Stringham and wife Annie, are now in St. George, Utah.

Dated at Salt Lake City, this 20th day of December, A. D. 1906.

C. FRANK EMERY,
Sheriff of Salt Lake County, Utah,
By A. H. STEELE,
Deputy Sheriff.

Sheriff's Fees.

Service	$10.00
Mileage	1.00
Total	$11.00

5 In the District Court of Salt Lake County, State of Utah, Chancery Division.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Summons.

The State of Utah to the said Defendants:

You are hereby summoned to appear within twenty days after the service of this summons upon you, if served within the county in which this action is brought, otherwise, within thirty days after service, and defend the above entitled action; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint of which a copy is herewith served upon you.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff.

P. O. Address: Suite 102 Keith Building, Salt Lake City, Utah.

Endorsed on back: Title of Court and Cause. Filed Dec. 26, 1906. J. U. Eldredge, Jr., Clerk, Dist. Court, Salt Lake County, Utah, by D. A. Smith, Deputy.

6 STATE OF UTAH,
County of Washington, ss:

I hereby certify that I served the summons hereunto annexed on the defendant John Stringham, on the 26th day of January, 1907, in Washington County, Utah, by leaving a true copy of said summons, with a copy of the complaint thereto attached, at his usual place of abode in said county, with a suitable person over the age of fourteen years, to-wit: his wife, Mrs. Annie May Stringham, and I endorsed on a copy of the summons so served the date of service and signed my name and official title thereto.

In witness whereof, I have hereunto set my hand at St. George, Washington County, Utah, this 26th day of January, 1907.

WILLIAM T. PERKINS,
Sheriff, Washington County, Utah.

7 In the District Court of Salt Lake County, State of Utah, Chancery Division.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Summons.

The State of Utah to the said Defendants:

You are hereby summoned to appear within twenty days after the service of this summons upon you, if served within the county in which this action is brought, otherwise, within thirty days after service, and defend the above entitled action; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff.

P. O. Address: Suite 102 Keith Building, Salt Lake City, Utah.

Endorsed on back: 8745. Filed January 30, 1907. J. U. Eldredge, Clerk, Dist. Court, Salt Lake County, Utah, D. A. Smith, Deputy Clerk.

8 In the District Court of the Third Judicial District of the State of Utah, County of Salt Lake, Chancery Division.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Answer of Ammon B. Stringham, Mary Stringham, Thomas B. Stringham, Ella Stringham.

Come now the defendants Ammon B. Stringham and Mary Stringham his wife and Thomas B. Stringham and Ella Stringham, his wife, and for answer to plaintiff's complaint herein:

1. The said defendants admit the allegations contained in the first paragraph of said complaint.

2. The said defendants deny each and every allegation contained in paragraph two of said complaint.

3. The said defendants have no knowledge or information sufficient to enable them to form a belief as to the allegation that the plaintiff claims title in fee to the said premises, and upon that ground deny the same; but the said defendants admit that they claim an estate or interest therein adverse to the plaintiff and to all other persons.

4. The said defendants deny each and every allegation contained in paragraph four of the said complaint.

5. The said defendants deny generally and specifically each and every allegation contained in said complaint not hereinbefore denied or admitted.

9 6. Further answering the said defendants allege that the defendants, Ammon B. Stringham and Mary Stringham, his wife, have been in the quiet and peaceable possession of the land and premises, described as follows, to-wit: All that piece or parcel of land in the lower placer mining district, County of Salt Lake, State of Utah, bounded as follows: All that portion of the surface ground of the Curtis Placer Claim, Lot No. 38, U. S. Patent Survey, which lies east of a north and south line, drawn through the point which in May, 1886, was marked by a gate, and situate 840 feet west of the east end line of the said Curtis Placer Claim, and north of a line, marked by a fence, running parallel to and 12½ feet north and distant from the center line of the Rio Grande Western Railway track, as the same now runs through the said Curtis Placer Mining Claim, holding and claiming the same adversely to the said plaintiff, and to all other persons, for more than seven years before the commencement of this action, to-wit, about thirteen years; and that neither the plaintiff, or its ancestors, predecessors or grantees was or were, seized or possessed, of the said land and premises, or any portion of the same, within seven years before the commencement of this action; that the possession of the said defendants, during the said time has been exclusive hostile, adverse, open, notorious and continuous, and the said land has been occupied and claimed for more than seven years before the commencement of this action continuously and the said defendants during the said time have paid all taxes which have been levied and assessed on said land, according to law; that the said defendants, more than seven years before the commencement of said action, enclosed the said land with a substantial enclosure, which said enclosure has continued upon the said land from thence to the present time, and still stands thereon; that the said defendants have cultivated and improved the said land, usually and continuously during the
10 said period, since they became possessed of the same as aforesaid; that the said defendants have erected dwelling houses thereon and have built barns and fences, and have placed other improvements upon the said land, and in that regard have expended about the sum of three thousand dollars, by virtue of all of which the said defendants allege that they were at the commencement of the said action and still are the owners in fee of the said land,

and entitled to the possession thereof, and that the said action, if any cause therefor ever existed, is barred by the provisions of section 2859 of the revised statutes of Utah, 1898.

Further answering the said defendants allege that the defendants Thomas B. Stringham and Ella Stringham, his wife, are the owners in fee, in possession and entitled to the possession of the following described land to-wit: All that portion of the surface ground of the Curtis Placer Mining Claim, Lot No. 38 U. S. Patent Survey, which lies east of a north and south line drawn through the point which in May, 1886, was marked by a gate, and situate 840 feet west of the east end of the said Curtis Placer Claim, and south of a line running parallel to and 12½ feet south and distant from the center line of the track of the Rio Grande Western Railway, as the same runs through the said Curtis Placer Mining Claim, situate in Salt Lake County, Utah.

That on or about the 13th day of September, 1889, Nicholas Treweek and Margaret Treweek, his wife, duly conveyed the said land to George Stringham; that on or about the 15th day of June, 1906, the said George Stringham duly conveyed the said land to Mary Stringham, and on or about the 1st day of July, 1906, the said Mary Stringham duly conveyed the said land to the defendants Thomas B. Stringham and Ella Stringham, his wife, which
11 said conveyances were duly made and delivered, and the plaintiff nor its predecessors have never had, nor has the plaintiff now, any right, title or interest in or to the said land or any part thereof.

That the said deeds so duly executed as aforesaid from the said Mary Stringham to these said defendants were never recorded or filed for record, but were lost and destroyed on or about the 15th day of July, 1906.

That the said defendants disclaim all right, title and interest or estate in or to the land described in plaintiff's complaint, except those portions thereof hereinabove described, and of which they claim to be the owners, respectively, as hereinabove set forth.

Wherefore the said defendants pray:

1. That the plaintiff be adjudged to have no right, title or interest in or to the land hereinbefore described and which is owned and claimed by the defendants Ammon B. Stringham and Mary Stringham, his wife.

2. That the plaintiff be adjudged to have no right, title or interest in or to the land hereinbefore described and which is owned and claimed by the said defendants Thomas B. Stringham and Ella Stringham, his wife.

3. That if the plaintiff shall be adjudged to be the owner of the land described in its complaint, that the defendants Ammon B. Stringham and Mary Stringham, his wife, have permission to take such further proceedings in this action as may be necessary to secure to them the value of or compensation for the improvements made upon that portion of the said land so claimed and occupied by them.

4. That the said defendants have such other and further relief

in the premises as they may in justice and equity be entitled to and that they have their costs herein.

A. A. DUNCAN,
Attorney for Ammon B. Stringham and Mary Stringham, His Wife; Thomas B. Stringham and Ella Stringham, His Wife.

12 STATE OF UTAH,
County of Salt Lake, ss:

Ammon B. Stringham being first duly sworn deposes and says, that he is one of the defendants named in the foregoing answer; that he has read said answer, knows the contents thereof, and that the *said* is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

AMMON B. STRINGHAM.

Subscribed and sworn to before me this 29th day of January, 1907.

[SEAL.] A. A. DUNCAN,
Notary Public.

Endorsed: No. 8745. Fi'ed Feb. 2, 1907. J. U. Eldrege, Jr., Clerk Dist. Court, Salt Lake County, Utah, by William E. Jenkins, Deputy Clerk.

13 In the District Court of the Third Judicial District of the State of Utah, County of Salt Lake.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM et al., Defendants.

Default Certificate.

In this action the defendants Francis H. Stringham, Laura Stringham, Clarence E. Stringham, Ida Stringham and John Stringham, having been regularly served with process, and having failed to appear and answer the plaintiff's complaint on file herein, and the time allowed by law for answering having expired, the default of said defendants Francis H. Stringham, Laura Stringham, Clarence E. Stringham, Ida Stringham and John Stringham in the premises is hereby duly entered according to law.

Attest my hand and the seal of said court, this 20th day of June, 1908.

[SEAL.] J. U. ELDREDGE, JR., *Clerk,*
N. H. TANNER, *Deputy Clerk.*

Endorsed: 8745. Filed June 20, 1908. J. U. Eldredge, Jr., Clerk Dist. Court of Salt Lake County, Utah, per N. H. Tanner, Deputy Clerk.

14 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Answer.

Comes now the above named defendants, Mary J. Stringham and Katherine Stringham and allege:

1. That long prior to the year 1870 one Dorr P. Curtis and Sarah L. Curtis, his wife, settled upon a portion of the unsurveyed agricultural lands of the public domain of the United States at the Mouth of Bingham Canyon, with the intention of acquiring the said land under the provisions of the laws of the United States enacted for the said purpose, and erected a dwelling house, stable and other out buildings thereon, and that they resided upon the said land continuously until on or about the year 1880.

2. That on or about the year 1872, one George Stringham and Mary J. Stringham, his wife, this defendant, settled upon a portion of the unsurveyed agricultural lands of the public domain of the United States, at the mouth of Bingham Canyon, Salt Lake County, Utah, in the vicinity of the settlement of the said Dorr P. Curtis, and his wife, with the intention of acquiring the said land under the provisions of the laws of the United States enacted for the said purpose, and erected a dwelling house and necessary and
15 convenient out buildings thereon, and that they resided upon this said land continuously until the death of the said George Stringham, on or about the 31st day of August, 1906.

2. That during the year 1873, the Bingham Canyon and Camp Floyd Railroad Company, the predecessor in interest of the plaintiff herein, entered into an agreement with the said Dorr P. Curtis and wife, for a right of way through the lands settled upon and occupied by them as in the first paragraph herein set out, and constructed and began the operation of its railroad through the said land upon the line in plaintiff's complaint described and pursuant to this said agreement, the said Dorr P. Curtis made, executed and delivered to the said Railroad Company a warranty deed for an easement and a right of way upon the line so surveyed through the lands of the said Dorr P. Curtis at the mouth of Bingham Canyon, being the northeast quarter of section eighteen (18) Township three (3) south, Range two (2) west of Salt Lake Meridian, together with sufficient space adjacent to said line for the use of said road not to exceed twelve and one-half (12½) feet on each side of the center of said road which deed is recorded in the office of the county recorder of Salt Lake County in Book T of Deeds on pages 511 and 512, and the parties plaintiff and defendant hereto and their prede-

cessors in interest have at all times treated and held these said limits by their use and occupation, and these defendants and their predecessors have built and maintained fences and buildings substantially defining these said limits as in said deed set forth without objection on the part of the plaintiffs herein at any time until on or about the first day of December, 1906.

3. That on or about the time from the 24th day of May to the 5th day of June, 1873, the lands at the mouth of the said Bingham Canyon, including the lands in the first paragraph herein described were surveyed under the direction of the United States Sur-
16 veyor General, for Utah, and a plat thereof was filed in the office of the said United States Surveyor General, and approved by him on the 20th day of May, 1874, and thereafter on the first day of August, 1874, a duly authenticated copy of the said plat was filed in the office of the Register of the United States Land Office for the district of Utah.

4. That on or about the year 1880, the said George Stringham purchased the possessory right of the said Dorr P. Curtis and wife in and to the said northeast quarter of section eighteen (18) including the dwelling house and other improvements, and thereafter, on the 12th day of June, 1883, the said George Stringham made, executed and filed in due form, in the office of the Register of the United States Land Office at Salt Lake City, Utah, his declaratory statement of his intention to claim the northeast quarter of section eighteen (18) in Township three south of Range Two West of Salt Lake Meridian, containing one hundred and sixty acres (160) as a preemption right under the provisions of the act of Congress of September 4th, 1841, which said instrument bears the file number 8863, in the office of said Register of Lands.

5. That on or about the 4th day of August, 1883, Nicholas Treweek, Abraham Hanauer and others made certain pretended placer mining locations, called Scoville and Company and Curtis Placer, upon the said northeast quarter of section eighteen extending about two hundred feet on each side of the railroad track and down the said canyon from the west line of the said quarter section to within a few feet of the east line thereof, and these said parties took forcible possession of about 1,200 feet of said Placer claim from the west line of said quarter section down to the east line of U. S. Lot No. 347 B, leaving the said George Stringham in the undisturbed possession of the remainder of said quarter section; and that
17 thereafter on the 11th day of May, 1886, various conflicts having arisen over the use of the western end of said pretended placer claim, an agreement was entered into between the said George Stringham and the said Nicholas Treweek whereby said Nicholas Treweek and his associates should proceed to obtain patent for the Scoville and Company's and Curtis Placer claims known as the U. S. Lots Nos. 37-38, and that they should be entitled to that portion of said placer claims as surveyed for patent from the westerly end line of the said northeast quarter down the canyon to a line drawn north and south at the east and line of the said U. S. Lot No. 347*b*, which said line was on the said 11th day of May, 1886, marked by a fence and gate; this said agreement was on the said

day reduced to writing, signed by the parties hereto, and a copy of this said instrument is hereto attached and made a part hereof and marked "Exhibit A;" and on this said 11th day of May, in pursuance of this said written agreement, and for the purposes of carrying out the terms thereof, the said George Stringham made final entry of the north one half of the northwest quarter of the said section eighteen, and made relinquishment in the office of the Register of the United States Land Office of the south one half of the northeast quarter of said section eighteen; and thereafter pursuant to said agreement, the said George Stringham remained in the undisturbed possession of the south one half of said northeast quarter of said section with the exception of the westerly portion of the said placer claim as hereinbefore set forth; and that thereafter, pursuant to the said agreement made on the 11th day of May, 1886, the said Nicholas Treweek, having procured patent for the said lots 37-38, made, executed and delivered to the said George Stringham a warranty deed bearing date September 15, 1889, for the purpose of perfecting the title of the said George Stringham in and to
18 that portion of the said northeast quarter of said section eighteen, which was patented as U. S. Lot No. 38, and which lay east of the line drawn north and south across the said lot at the east line of said U. S. Lot No. 347*b*, and which said deed is hereunto attached and made a part hereof and marked "Exhibit B."

6. On the 8th day of June, 1906, the said George Stringham by warranty deed conveyed the above described eastern portion of the said Curtis Placer Mining claim to the said Mary J. Stringham, one of the defendants herein, and the said Mary J. Stringham thereafter, on or about the 30th day of March, 1908, conveyed all of said portion of U. S. Lot No. 38, which lies south of the center line of the Rio Grande Western Railway track, to this defendant Katherine Stringham, and thereafter on the 24th day of June, 1908, said Mary J. Stringham conveyed all of that portion of U. S. Lot No. 38, which lies north of the center line of said Rio Grande Western Railway track to the Utah Savings and Trust Company, a corporation of the State of Utah, and made, executed and delivered to the said Utah Savings and Trust Company her deed of conveyance which said deed was recorded on the 1st day of September, 1908, in the office of the County Recorder of Salt Lake County, State of Utah, in Book 7U of Deeds, on page 209 thereof.

7. That the said Katherine Stringham and the Utah Savings and Trust Company, a corporation, are the owners, in possession and entitled to the possession of that portion of ground in plaintiff's complaint described extending from the east line of section eighteen (18) in Township three (3) South of Range two (2) West, Salt Lake Meridian, in a westerly direction along the center line of said Rio Grande Western Railway, and about 1,320 feet, saving only an
19 easement twelve and one half feet wide on either side of the center line of said railroad track across the said land last described.

8. This defendant denies each and every allegation in plaintiff's complaint contained, and each and every allegation in the answer of the defendants, Ammon B. Stringham and Mary Stringham, his

wife, and Thomas B. Stringham and Ella Stringham, his wife, in this cause herein filed, except such as are in this answer specifically alleged or admitted.

Wherefore the defendants, Mary J. Stringham and Katherine Stringham pray for judgment against the plaintiff and the other defendants herein that the defendant Katherine Stringham and Utah Savings and Trust Company, a corporation, are the owners in fee, in possession and entitled to the possession of that portion of the Curtis Placer claim, U. S. Lot No. 38, as described in the complaint herein which lies between the east line of section eighteen, in township three, south of range two, west, Salt Lake Meridian, and a line drawn parallel thereto and fourteen hundred feet distant along the center line of the said railway.

That the plaintiff is the owner, in possession, and entitled to the possession of an easement and right of way along the center line as described in the complaint herein across the said Curtis Placer Claim, and in width not to exceed twelve and one-half (12½) feet on each side of the said center line.

That the other defendants herein take nothing and for such other and further relief as may be equitable and just.

N. W. SONNEDECKER,
Attorney for the Defendants
Mary J. Stringham and Katherine Stringham.

20 STATE OF UTAH,
County of Salt Lake, ss:

Katherine Stringham, being first duly sworn, on oath deposes and says: that she is one of the defendants herein; that she has read the foregoing answer, knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein alleged on information and belief, and as to those matters, she believes it to be true.

KATHERINE STRINGHAM.

Subscribed and sworn to before me this 22nd day of December, 1908.

[SEAL.] RALPH A. McBROOM,
Notary Public.

My Commission expires on the 21st day of November, 1909.

Service by copy accepted this 23rd day of December, 1908.
A. A. DUNCAN.
VAN COTT, ALLISON & RITER.

21 EXHIBIT "A."

This agreement made this 11th day of May, 1886, by and between Nicholas Treweek and George Stringham, both of Salt Lake County, Utah. Witnesseth: That in consideration of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, and other

things herein mentioned, particularly the exclusion by said Stringham of the south half of the north east quarter of section 18, T. 3. S. R. 2 W. S. L. M. from his said Stringham's preemption claim, said Treweek agrees and promises to make to said Stringham a good and sufficient deed to all the surface ground of the Curtis Placer claim as surveyed for patent. East of a north and south line drawn through the spot marked by a gate and situate about 840 feet west of the east end of said Curtis Placer claim. Said Treweek reserving the right to run a tunnel through said ground to work the placer ground above and to such surface ground as may be necessary for the proper and convenient use of said tunnel. Said Stringham to pay said Treweek one 25/100 dollars per acre for the land to be so conveyed, deed to be made as soon as said Treweek makes final entry of his said Curtis' placer claim in the Salt Lake Land Office, which entry said Treweek agrees forthwith to make. Said Stringham agrees to accept said deed, and pay said price therefor. Said Treweek also reserves the right, should he so elect, to use any ground he may need for building and operating a mill at any point on the ground mentioned, south of the line of the railroad now running through said land.

In witness whereof said parties have hereunto set their hands and seals the day and year hereinbefore first mentioned.

NICHOLAS TREWEEK. [SEAL.]
G. STRINGHAM. [SEAL.]

Witness-:
M. M. KAIGHN.
W. J. McINTYRE.

22 UNITED STATES OF AMERICA.

TERRITORY OF UTAH,
County of Salt Lake, ss:

On this 11th day of May, A. D. 1886, before me, Maurice M. Kaighn, a notary public in and for the County of Salt Lake, Territory of Utah, duly commissioned and sworn, personally appeared Nicholas Treweek and George Stringham, known to me to be the same persons whose names are subscribed to the annexed instrument, and they duly acknowledged that they executed the same freely and voluntarily for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal at my office in the City and County of Salt Lake, Territory of Utah, the day and year in this certificate first above written.

M. M. KAIGHN,
Notary Public.

23 EXHIBIT "B."

This indenture, made the 13th day of September, in the year of our Lord one thousand, eight hundred and eighty nine between Nicholas Treweek and Margaret Treweek, his wife, both of the City and County of Salt Lake and Territory of Utah, the parties of the

first part, and George Stringham, also of said County and Territory, the party of the second part,

Witnesseth: That said parties of the first part, for and in consideration of the sum of twelve 50/100 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situate, lying and being in the Lower Placer Mining District, County of Salt Lake, Territory of Utah, described and bounded as follows, to-wit: All that portion of the surface ground of the Curtis Placer Claim (lot No. 38 U. S. Patent Survey) which lies east of a north and south line drawn through the point which in May, 1886, was marked by a gate and situate eight hundred and forty feet (840 feet) west of the east end of said Curtis Placer Claim.

Reserving a right to run a tunnel through the said ground to work the placer ground lying east and above the land herein granted and also such surface ground as may be necessary for the proper and convenient use of said tunnel, and

Also reserving the right, should said Nicholas Treweek so elect, to use any portion of said land lying south of the line of the railroad now running through same, that he may need for the building and operating a mill. This deed is made to carry out and perform, and is accepted as in full satisfaction and performance of a certain agreement dated May 11, 1886, made by and between George Stringham and Nicholas Treweek.

Together with all and singular the tenaments, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, homestead rights, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to said premises, and every part and parcel thereof, with the appurtenances, and the said Margaret Treweek hereby covenants and agrees to and with the said party of the second part, that she has a perfect right to sell and relinquish her right of dower in the land aforesaid, and in consideration of the premises and of the sum of one dollar to her in hand paid by the party of the second part, she has released, relinquished and conveyed, and by these presents does release, relinquish and convey unto the said party of the second part, his heirs and assigns, forever, all rights or privileges of dower of, in or to said premises and every part thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs, the fee-simple title to the said premises, and the quiet and peaceable possession thereof in the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against any and all persons whomso-

ever, lawfully claiming or to claim the same shall and will warrant, and by these presents forever defend.

In witness whereof, the said parties of the first part have
25 hereunto set their hands and seals the day and year first above written.

NICHOLAS TREWEEK. [SEAL.]
MARGARET TREWEEK. [SEAL.]

UNITED STATES OF AMERICA.

TERRITORY OF UTAH,
County of Salt Lake, ss:

On this 13th day of September, A. D. one thousand eight hundred and eighty-nine personally appeared before me, Maurice M. Kaighn, a notary public in and for said county, Nicholas and Margaret Treweek, wife of said Nicholas Treweek, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument, as parties thereto, and duly acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

And the said Margaret Treweek, wife of said Nicholas Treweek, having by me been made acquainted with the contents of said instrument, acknowledged, upon an examination separate and apart from her husband, that she executed said instrument and relinquished her dower in the real estate therein conveyed, freely and voluntarily and without compulsion or undue influence on the part of her said husband.

In witness whereof I have hereunto set my hand and affixed my notarial seal at my office at Salt Lake City, Utah the day and year in this certificate first above written.

[NOTARIAL SEAL.] M. M. KAIGHN,
Notary Public.

Endorsed: 8745. Filed Dec. 23, 1909. J. U. Eldredge, Clerk Dist. Court, Salt Lake County, Utah, by N. H. Tanner, Deputy.

26 In the District Court of the Third Judicial District of the State of Utah, County of Salt Lake.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Supplemental Answer of Ammon B. Stringham.

Comes now the defendant Ammon B. Stringham, and by leave of court first had and obtained, files this his supplemental answer to the complaint of plaintiff and alleges:

That on the 24th day of March, 1908, the defendant above named, Mary J. Stringham, by a certain writing, purporting to be a quit claim deed, a copy of which is hereunto annexed, marked Exhibit A and made a part hereof, conveyed all her right, title and interest in and to a portion of the land described in plaintiff's complaint, as follows:

Commencing at a point 10 feet west of the southwest corner of that certain house on said Curtis Placer, known as Thomas Stringham's house, thence south to the center of the track of the main line of the Rio Grande Western Railway, as the same is now located thereon, thence easterly along the center line of said track and following the angle thereof 350 feet, thence north to the north line of the said Curtis Placer Mining Claim, thence west 350 feet,
27 thence south to the place of beginning, together with all improvements thereon.

That by virtue of the said conveyance the said defendant alleges he is the owner in fee simple of the land hereinbefore described and since the said conveyance has been in the continuous and exclusive possession thereof.

A. A. DUNCAN,
Attorney for Defendant Ammon B. Stringham.

STATE OF UTAH,
County of Salt Lake, ss:

Ammon B. Stringham being first duly sworn deposes and says: that he is the defendant named in the foregoing supplemental answer, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

AMMON B. STRINGHAM.

Subscribed and sworn to before me this 14th day of January, 1908.

[SEAL.] A. A. DUNCAN,
Notary Public.

28 EXHIBIT A.

Quit Claim Deed.

Mary J. Stringham (a widow) grantor, of Salt Lake City, County of Utah, State of Utah, hereby quit claims to Ammon B. Stringham, of Bingham, Salt Lake County, State of Utah, for the sum of one dollar, the following described tract of land, in Salt Lake County, State of Utah:

All that portion of the Curtis placer mining claim Lot No. 38, U. S. Patent Survey, the same being situate in sections 17 and 18, township 3 south, range 2 west, Salt Lake Meridian, described as follows: Commencing at a point ten feet west of the southwest corner of that certain house on said Curtis placer claim known as Thomas Stringham's house; thence south to the center of the track of the

main line of the Rio Grande Western Railway, as the same is now located thereon; thence easterly along the center of said railway track and following the angle thereof 350 feet; thence north to the north line of said Curtis placer claim; thence west along the said north line of said Curtis placer claim 350 feet; thence south to the place of beginning, together with all improvements thereon.

Witness the hand of said grantor this twenty-fourth day of March, A. D. one thousand eight hundred and eight.

(Signed) MARY J. STRINGHAM.

Signed in the presence of
BARNARD J. STEWART.

STATE OF UTAH,
County of Salt Lake, ss:

On the twenty-fourth day of March, personally appeared before me Mary J. Stringham (widow) the signer of the above instrument, who duly acknowledged to me that she signed and executed the same.

[SEAL.] BARNARD J. STEWART,
Notary Public.

My Commission expires March 27th, 1910.

Endorsed: 8745. Filed January 15, 1909. Margaret Zane Witcher, Clerk Dist. Court of Salt Lake County, Utah. Fred C. Bassett, Deputy Clerk.

29 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial before the court, sitting without a jury, on January 25th, 1909, Messrs. Van Cott, Allison and Riter appearing as attorneys for the plaintiff, Mr. B. W. Sonnedecker appearing for the defendants Mary J. Stringham and Katherine Stringham, and Mr. Adam A. Duncan for the defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham and Ida Stringham. No answer was filed by any of the defendants except the defendants Ammon B. Stringham, Mary Stringham, Thomas Stringham, Ella Stringham, Katherine Stringham and Mary J. Stringham. The default of the other defendants for not answering was duly entered.

The court having heard and considered the evidence adduced on behalf of the plaintiff and the defendants Mary J. Stringham and Katherine Stringham, now finds the facts as follows:

1. The land in controversy herein is described as follows:

A strip of land 200 feet wide, being 100 feet wide on each side of the center line of the railroad track known at the time of the institution of this suit as the Bingham Branch of the Rio Grande Western Railway Company, as constructed over and across the Curtis placer mining claim, U. S. Lot No. 38, Lower Placer District, in the south half of the northeast quarter of sec. 18, and southwest quarter of the northwest quarter of section 17, in Township 3 South, Range 2 West, Salt Lake Base and Meridian, except, however, all that portion of said 200 feet strip which lies in the southwest quarter of the northwest quarter of said section 17, also that portion thereof which lies in the northeast quarter of said section 18 west of a northerly protraction of the east line of U. S. Lot No. 347B, Known as the Lead Mine Mill Site, situated in the northeast quarter of said section 18.

None of the defendants made any claim to these excepted areas.

2. That the Bingham Canyon and Camp Floyd Railroad Company, at all times hereinafter mentioned, was a corporation duly organized and existing under and by virtue of the laws of the Territory of Utah. It was organized September, 1872, and by its articles of incorporation was authorized and empowered to build, construct and operate a steam railroad beginning at Sandy, Salt Lake County, Utah, where a connection was to be made with a railroad then known as the Utah Southern Railroad, and running from that place in a general westerly direction through Bingham Canyon, and thence on to the town of Lewiston, in Camp Floyd Mining District, Tooele County, Utah, passing through Salt Lake, Utah and Tooele Counties, in the then Territory of Utah, the distance between these two termini being about thirty-five miles. That soon thereafter it began the construction of its said railroad, and by the end of 1873 had built the same from Sandy aforesaid to the town of Bingham, in Bingham Canyon, Salt Lake County, Utah, a
31 distance of 16.13 miles. The railroad thus built passed over the premises described in finding one, being the same premises described in the complaint where it has remained ever since, the center line therof being the same as that described in the complaint, and railroad trains have been operated regularly thereover ever since by the plaintiff and its predecessors in interest. The said railroad was never thereafter extended beyond said point in the town of Bingham.

3. That for the purpose of availing itself of the benefits of an Act of Congress entitled "An Act Granting to Railroads the Right of Way through the Public Lands of the United States," approved March 3, 1875, (18 Stat. 1. 482), the said The Bingham Canyon and Camp Floyd Railroad Company, in September, 1875, filed with the Secretary of the Interior a copy of its articles of incorporation and due proof of its organization under the same, which were accepted, received and approved by him September 20, 1875; and in

the year 1876, it filed with the Register of the United States Land Office at Salt Lake City, Utah, which was the district where the lands over which its said road was built were located, a profile and map of its road as then built between Sandy and the town of Bingham aforesaid, which profile and map showed that the railroad was built by the end of 1873 and showed the line of route of said railroad to be over and across the premises described in finding one. Said profile and map was approved by the Secretary of the Interior October 20, 1876. At the time herein mentioned said company was the owner of said railroad.

4. That section 18 aforesaid in which the premises in controversy are located, as well as other premises adjacent thereto, was first surveyed under the authority of the United States, in May, 1873. The survey thereof was approved by the United States Surveyor General May 20, 1874; and on August 1, 1874, a duly certified copy
32 of the township plat of survey of the premises thus surveyed, including section 18 aforesaid, was filed in the United States Land Office at Salt Lake City, Utah.

5. That about the year 1870, one Dorr P. Curtis, and his wife, settled upon some unsurveyed land, which after survey as aforesaid was found to be a part of the northeast quarter of said section 18, and included a portion of the premises described in finding one, with the intention of thereafter acquiring the same as agricultural lands under the preemption laws of the United States. He erected thereon a dwelling house and a barn, and resided upon said land until he sold his rights therein to George Stringham, as hereinafter mentioned. On October 28, 1873, he and his wife made, executed and delivered, for the sum of one hundred dollars, to said The Bingham Canyon and Camp Floyd Railroad Company, a deed of conveyance for a right of way for railroad purposes through and across the northeast quarter of said section 18, to the extent of 12½ feet on each side of the center of its railroad track, being the same railroad track as that mentioned and described in finding one.

6. That the plaintiff herein is a railroad corporation duly organized and existing under and by virtue of the laws of the State of Utah, and has by virtue of proper deeds of conveyance duly succeeded to and acquired the aforesaid railroad of the Bingham Canyon and Camp Floyd Railroad Company, including its right of way and property rights, and all rights, if any, acquired by it in and to the lands described in finding one by virtue of any of the foregoing proceedings; and at the trial the plaintiff, in support of its allegations of ownership, expressly and exclusively relied on the aforesaid Act of Congress approved March 3, 1875, and the various proceedings taken thereunder by the said the Bingham Canyon and Camp Floyd Railroad Company, and an Act of Congress entitled,
33 "An Act Granting the Right of Way of Ditch and Canal Owners over the Public Lands, and for other purposes," approved July 26, 1866, (14 Stat. L. 251), as the foundation of plaintiff's asserted title to the lands in question.

7. That about the same time the said Dorr P. Curtis made a settlement as mentioned in finding five hereof, one George Stringham, and his wife, Mary J. Stringham, one of the defendants herein, set-

tled upon some unsurveyed land in the vicinity of the aforesaid settlement of Dorr P. Curtis, with the intention of acquiring the same as agricultural lands under the preemption laws of the United States. After the survey hereinbefore mentioned, it was found that the lands thus settled upon were situated within the northeast quarter of said section 18, and included a portion of the premises described in finding one. He erected thereon a cabin and a barn and fenced portions of the same. About the year 1875, Dorr P. Curtis sold to George Stringham all of his possessory rights, title and interest in and to the land which he had settled on as aforesaid, and the improvements erected thereon, and thereupon moved away and surrendered possession thereof to George Stringhim.

8. That the records of the United States Land Office at Salt Lake City, Utah, in which district the lands in question are located, show that prior to June 12, 1883, no entry had been made on or any right initiated in or to the south half of the northeast quarter of said section 18, where the premises in question are located. On June 12, 1883, the said George Stringham filed in the United States Land Office, at Salt Lake City, Utah, a declaratory statement to the northeast quarter of said section 18, which statement recited that the land had not been offered at public sale and that it was his intention to claim the same as a preemption right under the Act
34 of Congress of September 4, 1841. That thereafter, on May 11, 1886, he cancelled and relinquished this entry as to the south half of the northeast quarter of said section 18, to Nicholas Treweek, pursuant to an agreement to acquire patent as hereinafter mentioned, but remained in possession of that portion of the mining claim hereinafter mentioned which was thereafter conveyed to him as hereinafter mentioned.

9. That on August 4, 1883, a number of persons located as placer ground under the mining laws of the United States, the mining claim known as the Curtis Placer mining claim, which is referred to in finding one, and thereafter such proceedings were had that on June 26, 1889, a mineral patent to said claim was issued by the United States to one Nicholas Treweek, the applicant for patent.

10. That the location of said mining claim covered a portion of the ground which the said George Stringham had settled upon as aforesaid; and after the said Treweek had made application for patent survey a dispute arose between him and the said Stringham relative to the rights of each in and to said ground; and thereupon the parties compromised the matters in dispute, by agreeing in writing, on May 11, 1886, that Treweek should proceed with his application for patent, and the latter agreed that upon receiving a patent to said claim he would convey to Stringham the surface of all of that portion of said claim lying between the east end thereof and a line drawn north and south through a point marked by a gate situated about 840 feet west of the east end of said claim, reserving however to himself, the said Treweek, the right to run a tunnel through said ground to work the placer ground above, and to such surface ground as might be necessary for the proper and convenient use of
35 said tunnel. That after a mineral patent was issued as aforesaid, the said Treweek executed and delivered to the said

Stringham, on September 13, 1889, a deed of conveyance containing the clauses below quoted, and describing the land therein conveyed as follows:

"All that portion of the surface ground of the Curtis Placer Claim (Lot No. 38, U. S. Patent Survey) which lies east of a north and south line drawn through the point which in May, 1886, was marked by a gate and situate eight hundred and forty (840) feet west of the east end of said Curtis Placer Claim.

Reserving the right to run a tunnel through said ground to work the placer ground lying east and above the land herein granted, and also such surface ground as may be necessary for the proper and convenient use of said tunnel and also reserving the right, should said Nicholas Treweek so elect, to use any portion of said land lying south of the line of the railroad now running through same, that he may need for the building and operating a mill. This deed is made to carry out and perform and is accepted as in full satisfaction and performance of a certain agreement dated May 11, 1866, made by and between said George Stringham and Nicholas Treweek."

11. The point on said land marked by a gate on May 11, 1886, was on the east end line of U. S. Lot No. 347 B, known as the Lead Mill site.

12. That on June 8, 1906, the said Stringham conveyed to the defendant Mary J. Stringham, by warranty deed, the whole of said Curtis Placer Mining Claim. But there was no evidence that he acquired title to the same except as herein set forth.

13. That on December 17, 1906, the plaintiff duly recorded in the office of the County Recorder of Salt Lake County, Utah, a notice of lis pendens, reciting that it had commenced this action against the defendants herein to quiet its title to the premises therein described, the description being the same as that contained in paragraph two of the complaint. No evidence tending to prove title on the part of any of the defendants was introduced except as stated in these findings.

As conclusions of law from the foregoing facts, the court
36 decides:

1. That the Act of Congress, approved March 3, 1875, applies only to railroads which may thereafter be built and does not apply to railroads already built and in operation at the time of its passage; and therefore the Bingham Canyon and Camp Floyd Railroad Company acquired no right, title or interest in and to the premises in question, under the Act or under the various proceedings taken by it in order to acquire the benefits which it confers.

2. That The Bingham Canyon and Camp Floyd Railroad Company acquired no right, title or interest in or to the premises in question under the said Act of Congress approved July 26, 1866.

3. That the title acquired by the said Treweek was the first title acquired to the premises in question, and by virtue of the deed of conveyance from him to George Stringham mentioned in finding ten and the deed of conveyance from the latter to Mary J. Stringham mentioned in finding twelve, she is the rightful owner of the surface ground conveyed in the first mentioned deed, subject to the

reservations and exceptions therein contained, and subject to the right of way in favor of the plaintiff as mentioned in the next conclusion of law.

4. That the plaintiff, by virtue of the deed of conveyance mentioned in finding five and by virtue of the pleadings herein, is entitled to a right of way for its railroad track and for railroad purposes over the premises described in finding one to the extent of twelve and one-half feet on each side of the center line thereof.

5. That a decree should be entered dismissing plaintiff's complaint for want of equity, the decree, however, to contain a clause to the effect that the plaintiff is entitled to a right of way for its
37 railroad track and for railroad purposes over the property mentioned in finding one to the extent of twelve and one-half feet on each side of the center line thereof.

C. W. MORSE, *Judge.*

Dated October 6, 1909.

Attest:
[SEAL.] MARGARET ZANE WITCHER, *Clerk.*
By N. H. TANNER, *Deputy.*

Endorsed: Filed October 6, 1909.

38 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Decree.

This cause having come on regularly for trial before the court without a jury on January 25, 1909, Messrs. Van Cott, Allison & Riter appearing as attorneys for the plaintiff, Mr. N. W. Sonnedecker appearing for the defendants Mary J. Stringham and Katherine Stringham, and Mr. Adam A. Duncan appearing for the defendants Thomas B. Stringham and Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham and Ida Stringham; and the default of the defendant John Stringham for not answering after being duly summoned having been entered; and the court having made and filed its findings of fact and conclusions of law:

Now, therefore, by virtue of the law and the findings aforesaid, it is hereby ordered, adjudged, and decreed, on motion of Messrs.
N. W. Sonnedecker and Adam A. Duncan, attorneys as afore-
39 said, that the plaintiff is not the owner in fee simple or otherwise or at all of the following described premises, or any portion thereof, except as stated below:

A strip of land 200 feet wide, being 100 feet wide on each side of the center line of the Bingham Branch of the Rio Grande Western Railway as the same is now constructed over and across the Curtis Placer Mining Claim, U. S. Lot No. 38, Lower Placer District, in the south half of the northeast quarter of section 18, and the southwest quarter of the northwest quarter of section 17, Township three south, Range two west, Salt Lake Base and Meridian.

Said center line is more particularly described as follows, to-wit:

Beginning at a point on the easterly end line of the said Curtis Placer Mining Claim north 21 deg. 15 Min. west 68 feet, more or less, from corner No. 2 of said claim, said point also being 708 feet, more or less, north and 361 feet, more or less, east of the west quarter corner of said section 17; thence north 80 deg. 59 min. west 427 feet, more or less, thence on a O deg. 40′ curve to the left 862.5 feet, thence north 86 deg. 44 min. west 1,077 feet, more or less, to a point on the westerly end line of the said mining claim, said point being 1,992 feet, more or less, and 925 feet, more or less, north of the east quarter corner of said section 18.

And its complaint on file herein, in which it seeks to quiet title to the aforesaid strip, is hereby dismissed for want of equity. But it is further ordered, adjudged and decreed that the plaintiff is entitled to a right of way for its railroad track and for railroad purposes to the extent of twelve and one-half feet on each side of the center line of its railroad track above mentioned. The defendant Mary J. Stringham shall have and recover of and from the plaintiff her costs of suit which are hereby taxed at $17.10.

C. W. MORSE, *Judge.*

Dated October 6th, 1909.

Attest:

[SEAL.] MARGARET ZANE WITCHER, *Clerk,*
By N. H. TANNER, *Deputy Clerk.*

Endorsed: 8745. Filed October 6, 1909. Margaret Zane Witcher, Clerk Dist. Court of Salt Lake County, Utah, by N. H. Tanner, Deputy Clerk.

40 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Notice of Undertaking on Appeal.

To the defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham and Ida Stringham, and to Mr. Adam A. Duncan, their attorney:

To the defendants Katherine Stringham and Mary J. Stringham and Mr. N. W. Sonnedecker, their attorney; and

To the defendant John Stringham:

You and each of you will please take notice that an undertaking on appeal on the part of the plaintiff herein has been filed with the clerk of said court with the United States Fidelity and Guaranty Company as surety therein.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff.

Dated October 8th, 1909.

Service of the foregoing notice admitted at Salt Lake City, Utah, this 8th day of October, 1909.

A. A. DUNCAN,
Attorney for Defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham, and Ida Stringham.

N. W. SONNEDECKER,
Attorney for Katherine Stringham and Mary J. Stringham.

41 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Affidavit.

STATE OF UTAH,
County of Salt Lake, ss:

W. D. Riter, being first duly sworn, deposes and says:

On October 8th, 1909, I deposited in the postoffice at Salt Lake City, Utah, in a sealed envelope with postage prepaid, addressed as follows: "Mr. John Stringham, St. George, Washington County, Utah," a true copy of the annexed notice of the filing of an undertaking on appeal. The place to which this letter was thus sent is the correct post office address of said defendant, and is his place of residence and is the place where the summons in this action was duly served on him by the Sheriff of Washington County, Utah.

W. D. RITER.

Subscribed and sworn to before me this 8th day of October, 1909.
[SEAL.]

J. R. HAAS,
Notary Public.

My Commission expires Oct. 14, 1910.

Endorsed: 8745. Filed Oct. 18, 1909. Margaret Zane Witcher, Clerk, Dist. Ct.

41*a* In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham and John Stringham, Defendants.

Notice of Appeal.

To the defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham and Ida Stringham, and to Mr. Adam A. Duncan, their attorney:

To the defendants Katherine Stringham and Mary J. Stringham and Mr. N. W. Sonnedecker, their attorney:

To the defendant John Stringham and

To the Clerk of said Court:

You and each of you will please take notice that the plaintiff herein hereby appeals to the supreme court of the State of Utah

from the decree which was made and rendered in this cause on October 6, 1909.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff.

Dated October 8th, 1909.

Service of the foregoing notice admitted at Salt Lake City, Utah, this 8th day of October, 1909.

A. A. DUNCAN,
Attorney for Defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham and Ida Stringham.
N. W. SONNEDECKER,
Attorney for Katherine Stringham and Mary J. Stringham.

41*b* In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis E. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham and John Stringham, Defendants.

Affidavit.

STATE OF UTAH,
County of Salt Lake, ss:

W. D. Riter, being first duly sworn, deposes and says: On October 8th, 1909, I deposited in the postoffice at Salt Lake City, Utah, in a sealed envelope with postage prepaid, addressed as follows: "Mr. John Stringham, St. George, Washington County, Utah," a true copy of the annexed notice of appeal. The place to which this letter was thus sent is the correct postoffice address of said defendant, and is his place of residence and is the place where the summons in this action was duly served on him by the sheriff of Washington County, Utah.

W. D. RITER.

Subscribed and sworn to before me this 8th day of October, 1909.
[SEAL.] J. R. HAAS,
Notary Public.

My Commission expires Oct. 14, 1910.

Endorsed: 8745. Filed Oct. 8, 1909. Margaret Zane Witcher, Clerk Dist. Court of Salt Lake County, Utah, Fred C. Bassett, Deputy Clerk.

42 In the District Court of the Third Judicial District in and for the County of Salt Lake, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM et al., Defendants.

I, Margaret Zane Witcher, Clerk of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, do hereby certify that the above and foregoing and hereto attached files contain all the papers as designated by plaintiff's attorneys, and filed in this court in the case of Rio Grande Western Railway Company v. Thomas B. Stringham, et al., No. 8745, together with a notice of appeal the same constituting the judgment roll therein.

I further certify that an undertaking on appeal, in due form, has been properly filed, and that the same was filed on the 8th day of October, 1909.

And I further certify that said judgment roll is by me transmitted to the Supreme Court of the State of Utah pursuant to such appeal.

Witness my hand and the seal of said court at Salt Lake City, Utah, this 25th day of October, 1909.

[SEAL.] MARGARET ZANE WITCHER, *Clerk*,
By OLIVIA M. BURT, *Deputy Clerk*.

43 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Amended Conclusions of Law as Ordered by Supreme Court.

This court having made and filed on October 6, 1909, findings of fact and conclusions of law; and the plaintiff having appealed to the Supreme Court from the decree rendered herein on October 6, 1909; and it now appearing from the remittitur of that court that said decree has been reversed and conclusions of law and a decree ordered in accordance with the opinion and judgment of that court contained in said remittitur:

Now therefore, the court from the aforesaid findings of fact now draws and finds the following conclusions of law:

1. That the Bingham Canyon and Camp Floyd Railroad Company acquired, under the act of Congress entitled "An Act Granting to Railroads a Right of Way Through the Public Lands of the United States," approved March 3, 1875, title to a right of way to

the extent of one hundred feet on each side of the central line of its railroad track over the public lands of the United States on
44 the approval by the Secretary of the Interior on October 20, 1876, of its right of way map filed pursuant to the provisions of that act.

2. That the lands in controversy became public lands on account of the failure of both Curtis and Stringham to file their preemption declaratory statements within three months from August 1, 1874, on which day a duly certified copy of the township plat of survey mentioned in finding four was filed in the United States Land Office at Salt Lake City, Utah, and were public lands subject to the operation of the Act of March 3, 1875, at the time The Bingham Canyon and Camp Floyd Railroad Company filed its organization papers and right of way map as recited in the findings and at the time of the approval of said map by the Secretary of the Interior on October 20, 1876.

3. That on the approval of said map title to a right of way one hundred feet on each side of the railroad track over the premises described in the complaint and in finding one became vested under said Act in the Bingham Canyon and Camp Floyd Railroad Company, and by virtue of the deeds of conveyance mentioned in the findings is now vested in the plaintiff.

4. That the mineral patent to the Curtis Placer Mining Claim, U. S. Lot No. 38, issued to Treweek June 26, 1889, is subject to and subordinante to the plaintiff's said right of way.

5. That the plaintiff is entitled to a decree quieting its title to a right of way over the premises described to the extent of one hundred feet on each side of the center of its track.

C. W. MORSE, *Judge.*

Dated December —, 1910.

Attest:

MARGARET WITCHER, *Clerk,*
By H. A. KING,
Deputy Clerk.

Filed Dec. 20, 1910.

MARGARET ZANE WITCHER,
Clerk of Salt Lake County, Utah.

45 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Decree.

This cause having come on regularly for trial before the court without a jury on January 25, 1909, Messrs. Van Cott, Allison & Riter appearing as attorneys for the plaintiff, Mr. N. W. Sonnedecker appearing for the defendants Mary J. Stringham and Katherine Stringham, and Mr. Adam A. Duncan appearing for the defendants Thomas B. Stringham and Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham and Ida Stringham; and the default of the defendant John Stringham for not answering after being duly summoned having been entered, and the court having made and filed its findings of fact and conclusions of law, and on October 6, 1909, entered a decree against the plaintiff; and the Supreme Court on an appeal by the plaintiff therefrom having reversed said decree and ordered conclusions of law and a decree to be made and rendered in accordance with its opinion and judgment contained in the remittitur now on file with the clerk of this court; and this court having made and filed conclusions of law in accordance
46 therewith:

Now, therefore, by virtue of the law and the matters aforesaid, it is hereby ordered, adjudged and decreed, that the plaintiff is the owner of a right of way over the following described premises, situated in Salt Lake County, State of Utah:

A strip of land 200 feet wide, being 100 feet wide on each side of the center line of the Bingham branch of the Rio Grande Western Railway as the same is now constructed over and across the Curtis Placer Mining Claim, U. S. Lot No. 38, Lower Placer District, in the south half of the northeast quarter of section 18, and the southwest quarter of the northwest quarter of section 17, Township three south, Range two west, Salt Lake Base and Meridian.

Said center line is more patricularly described as follows to-wit:

Beginning at a point on the easterly end line of the said Curtis Placer Mining Claim north 21 deg. 15 min. west 68 feet, more or less, from corner No. 2 of said claim, said point also being 708 feet, more or less, north and 361 feet, more or less, east of the west quarter corner of said section 17; thence north 80 deg. 59 min. west 427 feet, more or less, thence on a 0 deg. 40 min. curve to the left 862.5 feet, thence north 86 deg. 44 min. west 1,077 feet, more or less, to a point on the westerly end line of the said mining claim, said point

being 1,992 feet, more or less, west and 925 feet more or less, north of the east quarter corner of said section 18.

That the title of the plaintiff to such right of way is good and valid; and the defendants are forever enjoined and debarred from asserting any claim whatever in or to said land and premises, or any part thereof, adverse to the plaintiff's said right of way, and the plaintiff shall have and recover of and from the defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Katherine Stringham and Mary J. Stringham its costs both in this court and on appeal, which are hereby taxed at $166.65.

The former decree rendered by this court is vacated and set aside.

Done in open court this 20 day of December, 1910.

C. W. MORSE, *Judge.*

Attest:

[SEAL.] MARGARET ZANE WITCHER, *Clerk,*
By H. A. KING, *Deputy Clerk.*

Endorsed: Filed Dec. 20, 1910. Margaret Zane Witcher, Clerk, Dist. Court, Salt Lake County, Utah.

47 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Notice of Appeal.

To the defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham, and Ida Stringham and to Mr. Adam A. Duncan, their attorney:

To the defendants Katherine Stringham and Mary J. Stringham and N. W. Sonnedecker, their attorney:

To the defendant John Stringham, and

To the Clerk of said Court:

You and each of you will please take notice that the plaintiff herein hereby appeals to the Supreme Court of the State of Utah from the decree which was made and rendered in this cause on December 20, 1910.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff.

Dated December 27, 1910.

Service of the foregoing notice admitted at Salt Lake City, Utah, this 29th day of December, 1910.

ADAM A. DUNCAN,
Attorney for Defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham, and Ida Stringham.

——— ———,
Attorney for Katherine Stringham and Mary J. Stringham.

48 STATE OF UTAH,
County of Salt Lake, ss:

H. B. Young, being first duly sworn, deposes and says:
On December 29, 1910, at about three P. M. I served the annexed notice *of* N. W. Sonndecker by leaving a true copy thereof at his office in the Eagle Block, Salt Lake City, Utah, in a conspicuous place on his desk, his office being open at the time I called but he himself being absent, and no one being in charge of his office.

H. B. YOUNG.

Subscribed and sworn to before me this December 29, 1910.
[SEAL.]
J. R. HAAS,
Notary Public.

My commission expires October 14, 1914.

Endorsed: Filed Dec. 29, 1910. Margaret Zane Witcher, Clerk Dist. Court of Salt Lake County, Utah, N. P. Rasmusson, Deputy Clerk.

49 In the District Court of Salt Lake County, State of Utah.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants.

Notice of Filing of Undertaking on Appeal.

To the defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham, and Ida Stringham and to Mr. Adam A. Duncan, their attorney:
To the defendants Katherine Stringham and Mary J. Stringham and N. W. Sonnedecker, their attorney:
To the defendant John Stringham:

You will please take notice that an undertaking on appeal has been filed with the clerk of the court in this case, with the United States Fidelity and Guaranty Company as surety.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff.

Dated December 27, 1910.

Service of the foregoing notice admitted at Salt Lake City, Utah, this 29th day of December, 1910.

ADAM A. DUNCAN,
Attorney for Defendants Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham, and Ida Stringham.

____ ____,
Attorneys for Katherine Stringham and M. J. Stringham.

50 STATE OF UTAH,
County of Salt Lake, ss:

H. B. Young, being first duly sworn, deposes and says:
On December 29, 1910, at about three P. M. I served the annexed notice on Mr. N. W. Sonnedecker by leaving a true copy thereof at this office in the Eagle Block, Salt Lake City, Utah, in a conspicuous place on his desk, his office being open at the time I called but he himself being absent, and no one being in charge of his office.

H. B. YOUNG.

Subscribed and sworn to before me this December 29th, 1910.
[SEAL.] J. R. HAAS,
Notary Public.

My Commission expires October 14, 1914.

Endorsed: Filed December 29th, 1910. Margaret Zane Witcher, Clerk District Court of Salt Lake County, by N. P. Rasmusson, Deputy Clerk.

51 In the District Court of the Third Judicial District in and for Salt Lake County and State of Utah.

No. 8745.

RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff,
v.
THOMAS B. STRINGHAM et al., Defendants.

I, Margaret Zane Witcher, Clerk of the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, do hereby certify that the above and foregoing and hereto attached files contain all the papers in the transcript on appeal, filed and transmitted to the Supreme Court October 25th, 1909, and returned to this court October 26th, 1910, in the case of the Rio Grande Western Railway Company v. Thomas B. Stringham, et al., No. 8745, also amended conclusions of law, as ordered by Supreme Court, decree, notice of appeal and notice of filing of undertaking on appeal, the same constituting the judgment roll therein.
I further certify that an undertaking on appeal, in due form, has

been properly filed, and that the same was filed on the twenty-ninth day of December, A. D. 1910.

And I further certify that said judgment roll is by me transmitted to the Supreme Court of the State of Utah pursuant to such appeal.

Witness my hand — seal of said Court at Salt Lake City, Utah, this 31st day of December, A. D. 1910.

[SEAL.] MARGARET ZANE WITCHER, *Clerk.*

52 In the Supreme Court of the State of Utah.

No. 2098.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham and John Stringham. Defendants and Respondents.

Assignments of Error.

Now comes the plaintiff and appellant herein and assigns the following errors upon which it will rely for a reversal of the decree appealed from:

1. The court erred in drawing its first conclusion of law. On the contrary, the court should have decided that the Bingham Canyon and Camp Floyd Railroad Company did acquire under said act of Congress the strip of ground described in finding one.

2. The court erred in drawing its second conclusion of law. On the contrary, the court should have decided that under said act of Congress the Bingham Canyon and Camp Floyd Railroad Company did acquire the strip of ground described in finding one; or if it did not acquire a strip of ground of that width, then, in any event, it did acquire a strip of ground nine rods in width, being four and one-half rods on each side of the center of its track; this being the width which that company was permitted to acquire by con-

53 demnation proceedings under the laws of Utah Territory.

3. The court erred in drawing its third conclusion of law to the effect "that the title acquired by the said Treweek was the first title acquired to the premises in question, and by virtue of the deed of conveyance from — to George Stringham mentioned in finding ten and the deed of conveyance from the latter to Mary J. Stringham mentioned in finding twelve, she is the rightful owner of the surface ground conveyed in the first mentioned deed." On the contrary, the court should have decided that the Bingham Canyon and Camp Floyd Railroad Company was the first party to acquire title to the premises in question and that the plaintiff having succeeded to its rights is the rightful owner of said premises.

4. The court erred in drawing its fifth conclusion of law to the effect "that a decree should be entered dismissing plaintiff's complaint for want of equity." On the contrary, the court should have decided that the plaintiff is entitled to a decree as prayed for in its complaint.

5. The court erred in entering a decree dismissing the complaint for want of equity and in awarding costs to the defendant Mary J. Stringham. On the contrary, the court should have entered a decree in plaintiff's favor as prayed for in its complaint.

VAN COTT, ALLISON & RITER,
Attorneys for Plaintiff and Appellant.

Dated October 25th, 1909.

Received copy hereof this 25th day of October, 1909.

A. A. DUNCAN,
Attorney for Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham and Ida Stringham.

N. W. SONNEDECKER,
Attorney for Katherine Stringham and Mary J. Stringham.

Endorsed: Title of Court and Cause. Assignment of Errors. Filed Oct. 25, 1909.

54 In the Supreme Court of the State of Utah.

No. 2211.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants and Respondents.

Assignments of Error.

Now comes the plaintiff and appellant herein and assigns the following errors upon which it will rely for a reversal of the decree appealed from:

1. The court erred in deciding, in its first conclusion of law, that the Bingham Canyon and Camp Floyd Railroad Company acquired under the act of Congress therein mentioned title to a right of way of the width designated therein. On the contrary the court should have found that under said Act said railway company acquired title in fee simple over the public lands of the United States to the extent of one hundred feet on each side of the center of its track.

2. The court erred in deciding, in its third conclusion of law, that on the approval of the map therein mentioned title to a right of way to the extent of one hundred feet on each side of the
55 center of the track over the premises therein mentioned became vested in said railway company by virtue of said act, and is now vested in the plaintiff. On the contrary the court should have decided that on the approval of said map said railroad company acquired a title in fee simple over the premises mentioned therein to the extent of one hundred feet on each side of the center of the track, and that such title is now vested in the plaintiff.

3. The court erred in deciding, in its fourth conclusion of law, that the mineral patent therein referred to is subject to and subordinate to the plaintiff's said right of way. On the contrary the court should have decided that as the government had already parted with its title, the mineral patent to the Curtis Placer Mining Claim, U. S. Lot No. 38, issued to Treweek June 26, 1889, did not operate to convey to him that portion of said mining claim embraced in the grant to the Bingham Canyon and Camp Floyd Railroad Company.

4. The court erred in deciding in its fifth conclusion of law that the plaintiff is entitled to a decree quieting its title to a right of way over the premises therein referred to. On the contrary the court should have decided that the plaintiff is entitled to a decree quieting its title as prayed for in the complaint.

5. The court erred in rendering a decree adjudging the plaintiff to be the owner of a right of way over the premises therein described and enjoining the defendants from asserting any claim in or to said premises adverse to such right of way. On the contrary the court should have decreed the plaintiff to be the owner in fee simple of the premises therein described, and should have enjoined the defendants from asserting any claim to said premises adverse
56 to the plaintiff's title.

VAN COTT, ALLISON & RITER,
Attorneys for Appellant.

Copy received December 31, 1910.
A. A. DUNCAN,
Attorney for Some Defendants.

STATE OF UTAH,
County of Salt Lake:

H. B. Young, being first duly sworn, deposes and says:
On December 31, 1910, at about eleven forty-five A. M. I served the annexed notice on Mr. N. W. Sonnedecker, by leaving a true copy thereof at his office in the Eagle Block, Salt Lake City, Utah, in a conspicuous place on his desk, his office being open at the time I called but he himself being absent, and no one being in charge of his office.

H. B. YOUNG.

Subscribed and sworn to before me this December 31, 1910.
[SEAL.]
J. R. HAAS,
Notary Public.

My commission expires October 14, 1914.

Endorsed: Title of Court and Cause. Assignments of Errors. Filed December 31, 1910. H. W. Griffith, Clerk Supreme Court of Utah.

57 In the Supreme Court of the State of Utah, Regular February Term.

FEBRUARY 27TH, 1911.

No. 2211.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Appellant,
v.
T. B. STRINGHAM et al., Respondents.

This cause coming on regularly for hearing was argued by Mr. W. D. Riter, in behalf of appellant; by Mr. N. W. Sonnedecker, Esq.; in reply, was submitted and by the court taken under advisement.

58 In the Supreme Court of the State of Utah.

No. 2098.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Appellant,
v.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Respondents.

STRAUP, *C. J.*:

This is an action to quiet title to a strip of land 200 feet in width extending through two quarter sections. The defendants denied plaintiff's ownership and right of possession, and alleged ownership and possession in themselves.

The material facts found by the court are: In September, 1872, the Bingham Canyon and Camp Floyd Railroad Company, a corporation, was organized to construct and operate a steam railroad from Sandy, Salt Lake County, to Lewiston, Tooele County, a distance of 35 miles. In 1873, the road was built from Sandy to Bingham, a distance of 16.13 miles, and ever since has been maintained and operated between those points. The road was not constructed beyond Bingham. For the purpose of availing itself of the benefits of an Act of Congress entitled "An Act Granting to Railroads the Right of way through the Public Lands of the United States," approved March 3, 1875 (18 Stat. at L. 482) the Bingham Can-
59 yon & Camp Floyd Railroad Company, in September, 1875, "filed with the Secretary of the Interior a copy of its articles of incorporation and due proof of its organization under the same,

which were accepted, received, and approved by him on the 20th day of September, 1875; and in the year 1876 it filed with the Register of the U. S. Land Office at Salt Lake City, Utah, the district where the lands over which its road was built were located, a profile and map of its road as then built between Sandy and the town of Bingham, which profile and map showed that the railroad was built by the end of 1873, and showed the line of route of said railroad to be over and across the premises in question, and that such profile and map were approved by the Secretary of the Interior on the 30th day of October, 1876." In 1870 Dorr P. Curtis and George Stringham settled upon unsurveyed public lands of the United States, including the strip in dispute, with the intention of hereafter acquiring them as agriculture lands under the pre-emption laws of the United States. Curtis built a house and a barn, and Stringham a cabin and barn and fences, on the lands settled upon by them. Curtis continued to reside on his lands until 1875 when he sold his possessory rights and surrendered possession to Stringham. In May, 1873, these lands were surveyed under the authority of the United States. The survey was approved by the Surveyor General in May, 1874, and on the first day of August, 1874, a certified copy of the township plat of the survey of the premises was filed in the United States Land Office at Salt Lake City. No declaratory statement perfecting his pre-emption right was filed by Curtis. No declaratory statement was filed by Stringham until the 12th day of
60 June, 1883. On the 4th day of August, 1883, Nicholas Treweek and others located a placer mining claim on a portion of the ground settled upon by Stringham and Curtis. Upon an application made by Treweek for patent survey a dispute arose between Stringham and Treweek involving conflicting rights of possession. They, thereupon, on the 11th day of May, 1886, entered into a written agreement by the terms of which they agreed that Treweek should proceed with his application for patent, and when the patent was obtained by him he should convey to Stringham a certain portion of the surface grounds of the claim, including the strip of ground here in dispute. On the same day and pursuant to the agreement Stringham cancelled and released his filing and entry theretofore made by him in the land office. Treweek obtained his patent in June, 1889, and in September of that year he conveyed to Stringham the surface ground of a portion of the claim in accordance with the agreement. In June, 1906, Stringham conveyed to Mary J. Stringham. The plaintiff, just when is not found, by deeds of conveyance acquired from the Bingham Canyon and Camp Floyd Railroad Company, all its right, title and interest in and to the railroad, including its right of way and the lands in dispute. Both by the pleadings and findings it is made to appear that plaintiff's predecessor, by deeds of conveyance from Curtis and Stringham, acquired a right of way to a portion of the strip of ground in dispute, 12½ feet on each side of the center of the railroad track.

Upon these findings the trial court held:

"That the said Act of Congress, approved March 3, 1875, applies only to railroads which may thereafter be built and does not apply to railroads already built and in operation at the time of its pas-

sage; and therefore the Bingham Canyon and Camp Floyd Railroad Company acquired no right, title or interest in and to the premises in question under that act, or under the various proceedings taken by it in order to acquire the benefits which it confers.

"That the Bingham Canyon and Camp Floyd Railroad Company acquired no right, title or interest in or to the premises
61 in question under the said act of Congress approved July 26, 1866."

The court further held that the title acquired by Treweek was the first title acquired to the premises in question from the United States, and that by virtue of the deed of the conveyance from him to George Stringham, and from George Stringham to Mary J. Stringham, she was the rightful owner of the ground in dispute, except the 12½ feet on each side of the center of the track.

Judgment was thereupon entered dismissing plaintiff's complaint for want of equity except as to the 12½ feet. From this judgment the plaintiff has prosecuted this appeal on the judgment roll without a bill of exceptions.

It is contended that the decisive questions on the appeal are: (1) Were the lands in question, and upon and across which plaintiff's predecessor constructed its road, public lands when it filed its articles of incorporation with the Secretary of the Interior, and its profile and map with the Register of the District Land Office, and undertook to avail itself of the benefits of the Act? (2) Does the Act of Congress approved March 3, 1875, apply only to railroads constructed and operated after the act was passed, or does it also apply to railroads which were constructed and in operation before the act was passed?

When the respondents' predecessor, Dorr P. Curtis and George Stringham, settled upon the lands in 1870, the lands were unsurveyed public lands. Under the preemption laws of the United States then in force preemption claimants were required to file declaratory statements within three months from the date of the receipt at the District Land Office of the approved plat of the township embracing such preemption settlements. The lands settled upon
62 by these claimants were surveyed in May, 1873. The survey was approved in May, 1874. The township plat of the survey was filed in the District Land Office on the 1st day of August, 1874. Curtis filed no declaratory statement and made no entry in the Land Office. He sold his possessory rights to George Stringham in 1875 Stringham filed no declaratory statement and made no entry in the Land Office until the 12th day of June, 1883. These claimants failing to assert their rights by the filing of a declaratory statement, or by making an entry as preemptors, within the prescribed time after the receipt at the District Land Office of the township plat, acquired no prior rights by virtue of their settlement and occupancy; and their failure to file such declaratory statement left the lands subject to disposition by the United States as before their occupancy.

The Supreme Court of the United States, in the case of Buxton v. Traver, 130 U. S. 232, held that a settlement upon public lands in advance of a public survey is allowed to parties who, in good faith,

intend when the surveys are made and returned to the local land office to apply for their purchase; and when the public surveys are made and returned, the land, not having been in the meantime withdrawn, can be acquired and purchased by them by the filing of a declaratory statement within the time and by pursuing the steps prescribed by law. The court there said: "If those steps are from any cause not taken, the proffer of the government has not been accepted, and a title in the occupant is not even initiated. The title to the land remains unaffected, and subject to the control and disposition of the government, as before his occupancy. This doctrine has been long established in this court.' To the same effect are:

Northern Pacific Ry. Co. v. De Lacey, 174 U. S., 622;
Gonzales v. French, 164 U. S., 338;
Osborne v. Altschul, 101 Fed., 739.

63 We therefore say that the lands in question were public lands when plaintiff's predecessor, in 1875, filed its articles of incorporation with the Secretary of the Interior and when the profile and map of its road were filed by it in the District Land office, and approved by the Secretary of the Interior on the 20th day of October, 1876.

Now, as to the other question, was plaintiff's predecessor entitled to avail itself of the benefits of the Act of 1875, it being shown that its railroad was built and completed in 1873 for a distance of only 16.13 miles? The act, so far as material, is as follows:

"SEC. 1. That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any state or territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station buildings, depots, machine shops, side-tracks, turn-outs, and water stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

* * * * * * *

"SEC. 4. That any railroad company desiring to secure the benefits of this Act, shall, within twelve months after the location of any section of twenty miles of its road, if the same be on surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the Register of the Land Office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: Provided, That if any section of said road shall not be completed within five years

after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road." (18 Stat. L. 482-3; 6 Fed. Stat. Ann. 501, 506.)

We think that the Secretary of the Interior, when he received and accepted the articles of incorporation of plaintiff's predecessor, and approved the profile of its road filed with the Register of the District Land Office, determined the question now under
64 consideration. By such acceptance and approval the secretary necessarily determined that the Act did apply. This is not a proper proceeding nor forum to review that ruling.

The Supreme Court of the United States, in the case of Noble v. Union River Logging R. R., 147 U. S. 165, said:

"At the time the documents required by the Act of 1875 were laid before Mr. Vilas, then Secretary of the Interior, it became his duty to examine them, and to determine, amongst other things, whether the railroad authorized by the articles of incorporation was such a one as contemplated by the Act of Congress. Upon being satisfied of this fact, and that all the other requirements of the act had been observed, he was authorized to approve the profile of the road, and to cause such approval to be noted upon the plats in the land office for the district where such land was located. When this was done, the granting section of the Act became operative, and vested in the railroad company a right of way through the public lands to the extent of 100 feet on each side of the center line of the road. Frasher v. O'Connor, 115 U. S. 102. * * * The lands over which the right of way was granted were public lands subject to the operation of the statute, and the question whether the plaintiff was entitled to the benefit of the grant was one which it was competent for the Secretary of the Interior to decide, and when decided, and his approval was noted upon the plats, the first section of the Act vested the right of way in the railroad company.

To the same effect is also the case of Minneapolis, etc., Ry. Co. v. Doughty, 208 U. S. 251.

When, therefore, the Secretary approved the profile of the road, such approval operated as a conveyance of title to the right of way through the public lands to the extent of 100 feet on each side of the center of the road.

Lewis v. R. G. W. Ry. Co., 17 Utah, 504.
Phœnix, etc., Ry. Co. v. Arizona, etc., Ry. Co., 84 Pac., 1097.
O. S. L. Ry. Co. v. Stalker, 94 Pac., 56.
Red River, etc., Co. v. Sture, 22 Minn., 95.
Jamestown & Nor. R. R. Co. v. Jones, 177 U. S., 125.

It is not found whether the approval of the Secretary was noted upon the plats as required by sec. 4 of the Act, but, in the absence of a showing to the contrary, it will be presumed that the Secretary, upon his approval of the profile of the road, did what the law required him to do, and that such notation was made accordingly; and it has been held that even though such notation was not
65 made, such failure did not prejudice the rights of a railroad company having filed a profile of its road, for its title was

complete when such profile was approved by the Secretary. (O. S. L. Rd. Co. v. Stalker, supra.) Nor is it made to appear whether the mineral patent issued to Treweek in 1889 was in terms made subject to the right of way, but since Sec. 4 of the Act provides that "all such lands over which such right of way shall pass shall be disposed of subject to such right of way," it again will be presumed, in the absence of a showing to the contrary, that the subsequent disposition made to Treweek was subject to the right of way; and in any event, since the title to the right of way vested in plaintiff's predecessor upon the Secretary's approval of the profile of its road, it matters not whether the subsequent grant to Treweek was or was not in terms made subject thereto, for the law itself made it so.

Railroad Co. v. Baldwin, 103 U. S., 426.
Northern Pac. Rd. Co. v. Townsend, 190 U. S., 267.

Therefore the title which the respondents obtained from Treweek was subordinate to that of appellants.

We think upon the findings the plaintiff should prevail. The judgment of the court below is therefore reversed, and the case remanded to the district court with directions to vacate its conclusions and judgment heretofore made and entered, and to make conclusions and render and enter a judgment awarding to the plaintiff title to a right of way over the lands in question 100 feet wide on each side of the center of the track. Costs to appellant.

We concur:

J. E. FRICK, *J.*
W. M. McCARTY, *J.*

Endorsed: 2098. Filed Aug. 20, 1910. H. W. Griffith, Clerk Supreme Court, State of Utah.

66 In the Supreme Court of the State of Utah.

No. 2211.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Appellant,
v.
THOMAS B. STRINGHAM et al., Respondents.

McCARTY, *J.*:

Plaintiff, the appellant here, brought this action to quiet title to a right of way two hundred feet in width for a railroad track through certain lands belonging to defendants. Judgment was rendered dismissing plaintiff's complaint for want of equity except as to twelve and one-half feet on each side of the track. To reverse the judgment plaintiff appealed to this court on the judgment roll. This court reversed the judgment and remanded the cause to the district court with directions to that court to vacate its conclusions and judgment theretofore made and entered, and to "make conclusions and render and enter judgment awarding to the plaintiff title to a right of way over the lands in question one hundred feet wide on

either side of the center of the track." For a more detailed statement of the facts we invite attention to the opinion as published in 110 Pac. 868.

On receipt of the remittitur from this court, the district court vacated its conclusions of law and judgment theretofore made, rendered and entered, and in pursuance of the decision and order of this court found as conclusions of law "5. That the plaintiff is entitled to a decree quieting its title to a right of way over the premises described to the extent of one hundred feet on each side of the center of the track." The judgment entered recites, so far as ma-
67 terial here, that "by virtue of the law and the matters aforesaid, it is hereby ordered, adjudged and decreed, that the plaintiff is the owner of a right of way over the following described premises, situated in Salt Lake County, State of Utah: (Then follows a description of the right of way in question.) That the title of the plaintiff to such right of way is good and valid; and the defendants are forever enjoined and debarred from asserting any claim whatever in or to said land and premises, or any part thereof, adverse to the plaintiff's said right of way."

From the judgment rendered the plaintiff has again appealed to this court.

Counsel for plaintiff now contend that the court erred in finding as a conclusion that plaintiff is entitled to a decree quieting its title to a right of way over the premises in question. They insist that under the findings of fact as made and entered in the cause the court should have found as a conclusion of law that plaintiff is entitled to a decree adjudging it to be the owner in fee simple of a right of way over the premises mentioned.

The only question to be determined on this appeal is, whether the conclusions and decree of the court below, made and entered, are in conformity with the prior mandate of this court. We think they are. If counsel for appellant thought that this court, in the prior opinion, did not correctly define and determine the extent of appellant's rights to the land in dispute, or did not fully safeguard its rights as defined and adjudged, they should have filed a
68 petition for a rehearing. This they did not do.

The conclusions of law and judgment having been drawn and entered in conformity with the decision of this court, we are precluded from further considering the case. The former decision became, and is the law of the case, and this court, as well as the litigants, are bound thereby.

Judgment affirmed. Costs to respondents.

We concur:

J. E. FRICK, *C. J.*

D. N. STRAUP, *J.*

69 In the Supreme Court of the State of Utah.

No. 2211.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants and Respondents.

Petition for Writ of Error from the United States Supreme Court to the Supreme Court of Utah.

To the Hon. Joseph E. Frick, Chief Justice of the Supreme Court of the State of Utah:

Your petitioner, The Rio Grande Western Railway Company, respectfully represents and shows:

That the above suit was originally instituted by your petitioner as plaintiff against the above named defendants in the District Court of Salt Lake County, Utah, to quiet title to certain premises particularly described in the complaint, wherein your petitioner alleged it was the owner of the same in fee simple. On the trial your petitioner, in support of its asserted ownership to said premises, relied expressly and exclusively on an Act of Congress approved March 3, 1875, entitled "An Act Granting to Railroads the Right of Way through the Public Lands of the United States," (18 Stat. L. 482) and various proceedings taken thereunder by The Bingham
70 Canyon and Camp Floyd Railroad Company to acquire the benefits of that act, and an Act of Congress approved July 26, 1866, entitled "An Act granting the right of Way to Ditch and Canal Owners over the Public Lands and for Other Purposes," as the foundation of its asserted title to the lands in question.

A decree was rendered against your petitioner by the District Court, which adjudged and decided that the Bingham Canyon and Camp Floyd Railroad Company, the predecessor in interest of your petitioner, was not entitled to the benefits of either of said acts. Thereupon your petitioner appealed to the Supreme Court of the State of Utah. This court, on August 30, 1910, rendered its judgment reversing that of the District Court. It was adjudged by this court that the Bingham Canyon and Camp Floyd Railroad Company was entitled to the benefits of said Act of March 3, 1875, and said court thereupon remanded the case to the District Court with directions "to vacate its conclusions and judgment heretofore made and entered, and to make conclusions and to render and enter a judgment awarding the plaintiff title to a right of way over the lands in question 100 feet wide on each side of the center of the track." Thereupon the District Court, in opposition to the conten-

tion of your petitioner that it was entitled under the mandate of this court and under the law to a fee simple title, made new conclusions of law to the effect that your petitioner acquirred under said act only a right of way over the premises in question and rendered a decree to this effect. On appeal by your petitioner to the Supreme Court of Utah this judgment was affirmed May 6, 1911. The Supreme Court of Utah is the highest court of this state in which a decision of this suit and this matter can be had, and its aforesaid
71 judgment is final.

Wherefore, your petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Utah, to the end that the record in said matter may be removed into the Supreme Court of the United States and the error complained of by your petitioner may be examined and corrected and said judgment reversed.

THE RIO GRANDE WESTERN RAILWAY COMPANY,
By WALDEMAR VAN COTT,
E. M. ALLISON, JR.,
WILLIAM D. RITER, *Its Attorneys.*

Dated June 2, 1911.

Filed Jun- 2, 1911.
H. W. GRIFFITH,
Clerk Supreme Court Utah.

72 In the Supreme Court of the State of Utah.

No. 2211.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,
vs.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants and Respondents.

Order Allowing Writ of Error.

The above entitled matter coming on to be heard upon the petition of the plaintiff and appellant herein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Utah, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter:

It is ordered that a writ of error be and is hereby allowed to this

court from the Supreme Court of the United States, and the bond for that purpose is fixed at the sum of three hundred dollars.

J. E. FRICK,
Chief Justice of the Supreme Court of the State of Utah.

Dated June 2, 1911.

Filed Jun- 2, 1911.
H. W. GRIFFITH,
Clerk Supreme Court Utah.

73 In the Supreme Court of the United States.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,
vs.
THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants and Respondents.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the State of Utah, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit (numbered therein 2211) between The Rio Grande Western Railway Company, plaintiff and appellant, (plaintiff in error in this court) and Thomas B. Stringham and Ella Stringham, his wife, Ammon B. Stringham and Mary Stringham, his wife, Francis H. Stringham and Laura Stringham, his wife, Clarence E. Stringham and Ida Stringham, his wife, Katherine Stringham, Mary J. Stringham and John Stringham, defendants and respondents (defendants in error in this court), wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution or of a treaty, or statute of, or commission held under
74 the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under

such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Rio Grande Western Railway Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st day of August, 1911, in the said supreme court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Edward Douglass White, Chief Justice of the said Supreme Court, the 2d day of June, in the year of our Lord, 1911.

[Seal United States Circuit Court, District of Utah.]

JERROLD R. LETCHER,
Clerk of the Circuit Court of the United States in and for the District of Utah.

Allowed by
J. E. FRICK,
Chief Justice of the Supreme Court of Utah.

Filed Jun- 2, 1911.
H. W. GRIFFITH,
Clerk Supreme Court Utah.

75 In the Supreme Court of the State of Utah.

No. 2211.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,

v.

THOMAS R. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON R. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants and Respondents.

Assignment of Errors.

The plaintiff and appellant in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred upon the trial of the cause:

1. The court erred in holding that a railway company acquires, under the Act of Congress entitled "An Act Granting to Railroads

the Right of Way through the Public Lands of the United States," approved March 3, 1875, only a right of way or easement over the public lands of the United States and not a title in fee simple.

2. The court erred in holding that the plaintiff herein as the successor in interest of The Bingham Canyon and Camp Floyd Railroad Company is entitled only to a right of way or easement over the lands in question under the said act of March 3, 1875, and not a fee simple title thereto.

3. The court erred in holding that the plaintiff herein as the successor in interest of the Bingham Canyon and Camp Floyd Railroad Company is not entitled under the said Act of March 3, 1875, to a fee simple title to the lands in question, so long as it uses the same for the running and operation of its railroad trains
76 and for other railroad purposes.

4. The court erred in holding that the plaintiff herein, as the successor in interest of the Bingham Canyon and Camp Floyd Railroad Company, is not entitled under the said Act of March 3, 1875, to the exclusive possession of the surface of the lands in question, so long as it uses the same for the running and operation of its railroad trains and for other railroad purposes.

Wherefore, the plaintiff prays that the judgment of the Supreme Court of Utah be reversed.

WALDEMAR VAN COTT,
E. M. ALLISON, JR.,
WILLIAM D. RITER,
Attorneys for Plaintiff.

Filed Jun- 2, 1911.
H. W. GRIFFITH,
Clerk Supreme Court Utah.

77 *Citation.*

2211.

UNITED STATES OF AMERICA, *ss:*

To Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham, Ida Stringham, Katherine Stringham, Mary J. Stringham and John Stringham:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Utah, (in suit numbered therein 2211), wherein The Rio Grande Western Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph E. Frick, Chief Justice of the Supreme Court of the State of Utah this 2nd day of June, in the year of our Lord, 1911.

J. E. FRICK,
Chief Justice of the Supreme Court of Utah.

Due service of the within citation admitted and copy received this 2nd day of June, 1911, at Salt Lake City, Utah.

A. A. DUNCAN,
Attorney for Thomas B. Stringham, Ella Stringham, Ammon B. Stringham, Mary Stringham, Francis H. Stringham, Laura Stringham, Clarence E. Stringham, Ida Stringham.

N. W. SONNEDECKER,
Attorneys for Katherine Stringham and Mary J. Stringham.

Filed June 12, 1911.

H. W. GRIFFITH,
Clerk Supreme Court of Utah.

78 STATE OF UTAH,
County of Washington, ss:

On this 9th day of June, 1911, personally appeared before me Charles R. Worthen, who being by me first duly sworn, deposes and says:

I am the Sheriff of Washington County, State of Utah. On the 9th day of June, 1911, I served the annexed citation on John Stringham, one of the parties mentioned therein, by delivering to him personally, in Washington County, Utah, a true copy of said citation.

C. R. WORTHEN.

Subscribed and sworn to before me this 9th day of June, 1911.

[Seal Jos. S. Snow, Notary Public, Washington County, Utah.]

JOS. S. SNOW,
Notary Public.

My commission expires Nov. 2, 1913.

79 In the Supreme Court of the State of Utah.

No. 2211.

THE RIO GRANDE WESTERN RAILWAY COMPANY, Plaintiff and Appellant,

v.

THOMAS B. STRINGHAM and ELLA STRINGHAM, His Wife; AMMON B. Stringham and Mary Stringham, His Wife; Francis H. Stringham and Laura Stringham, His Wife; Clarence E. Stringham and Ida Stringham, His Wife; Katherine Stringham, Mary J. Stringham, and John Stringham, Defendants and Respondents.

Bond.

Know all men by these presents:

That we, The Rio Grande Western Railway Company, as principal, and the United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Thomas B. Stringham and Ella Stringham, his wife, Ammon B. Stringham and Mary Stringham, his wife, Francis H. Stringham and Laura Stringham, his wife, Clarence E. Stringham and Ida Stringham, his wife, Katherine Stringham, Mary J. Stringham and John Stringham in the sum of three hundred dollars, to be paid to the said obligees, their successors, representatives and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 2nd day of June, 1911.

Whereas, the above named plaintiff and appellant (Plaintiff in error in the United States Supreme Court) has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Utah:

Now, therefore, the conditon of this obligation is such
80 that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof, we have hereunto set our hands and seals at Salt Lake City, Utah, this 2nd day of June, 1911.

THE RIO GRANDE WESTERN RAILWAY COMPANY,
By WALDEMAR VAN COTT, [SEAL.]
E. M. ALLISON, JR.,
WILLIAM D. RITER,
Its Attorneys in Fact and in Law.

THE UNITED STATES FIDELITY & GUARANTY CO.,
[SEAL.] By EDWARD E. JENKINS, *Its Attorney in Fact.*

I hereby approve the foregoing bond and surety this 2nd day of June, 1911.

J. E. FRICK,
Chief Justice of the Supreme Court of the State of Utah.

Filed June 2, 1911.

H. W. GRIFFITH,
Clerk Supreme Court Utah.

81 UNITED STATES OF AMERICA.

STATE OF UTAH,
County of Salt Lake, ss:

I, H. W. Griffith, Clerk of the Supreme Court of the State of Utah, pursuant to a writ of error allowed wherein the Rio Grande Western Railway Company is Plaintiff in Error, and Thomas B. Stringham, et al., are Defendants in Error, herewith transmit a copy of the record and the proceedings had on the appeal from the judgment rendered in the Third Judicial District Court, the submission of the cause in the Supreme Court of Utah, assignments of error and opinion filed therein, and a copy of the bond on appeal to the Supreme Court of the United States, together with the original petition for a writ of error, order allowing writ, writ of error, assignments of error, and the citation directed to the defendants herein.

I further certify that the said copies of the several papers herewith transmitted, are full, true, and correct copies of the originals now on file or of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Supreme Court of the State of Utah, this 20th day of July, A. D. 1911.

[Seal Supreme Court, State of Utah.]

H. W. GRIFFITH, *Clerk.*

Endorsed on cover: File No. 22,822. Utah Supreme Court. Term No. 72. The Rio Grande Western Railway Company, plaintiff in error, vs. Thomas B. Stringham and Ella Stringham, his wife, et al. Filed July 27th, 1911. File No. 22,822.

Supreme Court of the United States.

October Term, 1915.

THE RIO GRANDE WESTERN RAILWAY COMPANY,
Plaintiff in Error,
v.
THOMAS B. STRINGHAM AND ELLA STRINGHAM, HIS WIFE; AMMON B. STRINGHAM AND MARY STRINGHAM, HIS WIFE; FRANCIS H. STRINGHAM AND LAURA STRINGHAM, HIS WIFE; CLARENCE E. STRINGHAM AND IDA STRINGHAM, HIS WIFE; KATHERINE STRINGHAM, MARY J. STRINGHAM AND JOHN STRINGHAM,
Defendants in Error.

Brief of Plaintiff in Error.

STATEMENT OF CASE.

This suit was instituted in the District Court of Salt Lake County, Utah, by the plaintiff in error here against the defendants in error to quiet title to a strip of land described in the complaint. The trial court made findings of fact and conclusions of law (T. 17), and entered a decree based thereon, dismissing the complaint for

want of equity. (T. 22.) It appears from the findings that the Bingham Canyon & Camp Floyd Railroad Company was incorporated under the laws of Utah in 1872, for the purpose of building a railroad from Sandy, in Salt Lake County, Utah, to Lewiston, in Tooele County, Utah, a distance of about thirty-five miles. By the end of 1873 it had built its road from Sandy to Bingham, Salt Lake County, Utah, a distance of 16.13 miles. Beyond this point the railroad was never extended. At the time the road was thus built Section 18, Township 3 South, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah, across which it extended, was unsurveyed. The lands in that vicinity, including this section, were first surveyed in May, 1873. The survey thereof was approved by the United States Surveyor General May 20, 1874; and on August 10, 1874, a duly certified copy of the township plat of survey was filed in the United States Land Office at Salt Lake City, Utah. About 1870 one Dorr P. Curtis made a settlement upon some lands in Bingham Canyon, and after the survey aforesaid it was found that the lands thus settled upon were embraced in the northeast quarter of Section 18. About the same time George Stringham also made a settlement in that locality; and after the survey it was found that the lands he settled upon were also located in the northeast quarter of Section 18. Both Curtis and Stringham made certain improvements on their respective settlements. In 1875 Curtis sold out to Stringham and moved away. When the railroad was built it passed through the lands which Curtis and Stringham had thus

settled on. In October, 1873, Curtis executed and delivered to the Railroad Company a deed of conveyance for a right of way for railroad purposes over and across the northeast quarter of Section 18, to the extent of 12½ feet on each side of the center of its track. No deed of conveyance was ever obtained from Stringham; but as already stated the deed executed by Curtis purported to give to the Railroad Company a right of way to the extent designated over and across the whole of the northeast quarter of Section 18, which would include the lands which Stringham had settled on. For the purpose of availing itself of the benefits of the act of Congress of March 3, 1875, entitled "An Act Granting to Railroads a Right of Way through the Public Lands of the United States" (18 Stat. L. 482), the Bingham Canyon & Camp Floyd Railroad Company in 1875 filed with the Secretary of the Interior a copy of its articles of incorporation and due proof of its organization under the same, which were received, accepted and approved by him in September, 1875. In 1876 it also filed with him a profile or map of its road as then built between Sandy and Bingham, which was approved by him in October, 1876. At this time that company was still the owner of the railroad in question. Since then, by proper deeds of conveyance, the plaintiff below—the plaintiff in error here—has succeeded to all of its right, title and interest in and to this railroad, including its rights, if any, in and to the premises involved in this suit. As the findings recite, Curtis and Stringham settled on these lands with a view of acquiring them as agricultural lands under the

pre-emption laws of the United States. They were obliged to file their declaratory statements within three months from August 1, 1874, that being the date when the township plat of survey was filed in the local land office. Curtis never filed a declaratory statement, but as already stated sold out to Stringham in 1875, and moved away. It was not until June 12, 1883, that Stringham ever filed his declaratory statement. On August 4, 1883, a number of persons located the Curtis placer mining claim, over which the strip of ground in controversy is located. Thereafter such proceedings were had that on June 26, 1889, a mineral patent to this claim was issued by the United States to Nicholas Treweek, the applicant for patent. While his application for a patent was pending, a dispute arose between him and Stringham as to the rights of each in and to the ground covered by the placer mining claim, and thereupon the parties compromised the matters in dispute by a written agreement dated May 11, 1886, wherein Stringham agreed to cancel and relinquish his interest as to the south half of the northeast quarter of Section 18, and Treweek agreed that after obtaining a United States mineral patent, he would convey to Stringham a portion of the surface of the mining claim, particularly described in the agreement.

This agreement was thereafter carried out, Stringham on the same day relinquishing his entry as to the south half of the northeast quarter of Section 18, in which the mining claim was located; and after the patent was issued to Treweek, the latter, in September, 1889, conveyed to Stringham that portion of the surface agreed

on. In June, 1906, Stringham conveyed to the defendant below, Mary J. Stringham—one of the defendants in error here—the whole of the Curtis placer mining claim, but so far as the findings go he never acquired title to any portion thereof except that portion embraced in the deed of conveyance from Treweek to him.

Under these circumstances, the trial court adjudged that the Bingham Canyon & Camp Floyd Railroad Company, having been built prior to March 3, 1875, was not entitled to the benefits of that act; that Treweek first obtained title under his mineral patent to the premises in dispute; and Treweek having conveyed this title to Stringham in 1889, and Stringham having conveyed his title to the defendant, Mary J. Stringham, in June, 1906, she was the rightful owner of the premises in controversy. Her answer, however, virtually admitted that the plaintiff was entitled to a right of way to the extent of 12½ feet on each side of the center of its track, and the court, while dismissing the complaint for want of equity, adjudged and decreed that the plaintiff was entitled to an easement to the extent just mentioned. None of the other defendants introduced any evidence showing that they had any right, title or interest in or to the premises. As the findings recite, "No evidence tending to prove title on the part of any of the defendants was introduced except as stated in these findings." The controversy, therefore, was really between the plaintiff and the defendant, Mary J. Stringham. As recited in the findings, the plaintiff relied entirely on the act of Congress above

mentioned (as well as another act of Congress not necessary to be mentioned) and the steps taken by the Bingham Canyon & Camp Floyd Railroad Company to acquire the benefits thereby conferred, as the foundation of its asserted title.

From the decree so rendered the plaintiff took an appeal to the Supreme Court of Utah. (T. 25.) That court reversed the decree (T. 36), holding in effect that the approval by the Secretary of the Interior of the profile or map filed with him by the Bingham Canyon & Camp Floyd Railroad Company, in October, 1876, operated as a conveyance of title to a right of way through the public lands to the extent of 100 feet on each side of the center of the road. In reversing the decree the Supreme Court of Utah said:

> "We think upon the findings the plaintiff should prevail. The judgment of the court below is therefore reversed, and the cause remanded to the District Court with directions to vacate its conclusions and judgment hereinbefore rendered and to make conclusions and render and enter a judgment awarding to the plaintiff *title to a right of way* over the lands in question 100 feet wide on each side of the center of the track."

Accordingly, on the filing of the remittitur, the trial court vacated its former decree (T. 30) and made amended conclusions of law as ordered by the Supreme Court (T. 27), and rendered a decree in plaintiff's favor. (T. 29.) By this new decree it was adjudged that "Plaintiff is the owner of a *right of way* over the following described premises." From this decree the plaintiff appealed, assigning as error (T. 34-35) that the court

should have given it a fee simple title instead merely of a right of way. The Supreme Court affirmed the decree. (T. 41.) In doing so, it said:

> "Counsel for plaintiff now contend that the court erred in finding as a conclusion that plaintiff is entitled to a decree quieting its title to a right of way over the premises in question. They insist that under the finding of fact as made and entered in the cause the court should have found as a conclusion of law that plaintiff is entitled to a decree adjudging it to be the owner in fee simple of a right of way over the premises mentioned.
>
> "The only question to be determined on this appeal is whether the conclusions and decree of the court below, made and entered are in conformity with the prior mandate of this court. We think they are. If counsel for appellant thought that this court, in the prior opinion, did not correctly define and determine the extent of appellant's rights to the land in dispute, or did not fully safeguard its rights as defined and adjudged, they should have filed a petition for a rehearing. This they did not do."

From the decree as thus affirmed, the plaintiff in error here sued out the writ of error in this case. At the same time it also sued out a writ of error to review the first judgment rendered by the Supreme Court of Utah. (Case No. 22821.) This was done because of the difficulty of determining which is the final judgment. If it should be held by this court that the judgment first rendered by the Supreme Court of Utah in reversing the trial court's decree and ordering a new decree to be entered in conformity therewith is the final judgment, then the writ of error in Case No. 22821 to review that judg-

ment is properly sued out. If, on the other hand, it should be held that the judgment did not become final until the Supreme Court of Utah affirmed the second decree of the trial court entered in accordance with the first judgment of reversal, then the writ of error in this cause (22822) was properly sued out. The contention of the plaintiff in error is that under the Act of Congress of March 3, 1875 (18 Stat. L. 482), a railroad company which complies with the provisions of that act acquires a title in fee simple and therefore the Supreme Court of Utah committed error in affirming the second decree of the trial court, which gave to plaintiff in error merely a right of way.

ARGUMENT.

A RAILWAY COMPANY WHICH COMPLIES WITH THE ACT OF CONGRESS OF MARCH 3, 1875, ACQUIRES A TITLE IN FEE SIMPLE, AND NOT MERELY AN EASEMENT OR RIGHT OF WAY.

The assignment of errors (T. 46) raises the question whether a railway company which compiles with the act of Congress just referred to acquires a title in fee simple, or merely a right of way or easement over the public land. There are four assignments of error, all of which may properly be discussed together. The contention of the plaintiff in error is that a railway company complying with the provisions of that act acquires a title in fee simple. In any event, it acquires a fee simple title, *so long as it uses the lands for railroad purposes.* If we are wrong in this contention, still we insist that error was committed in not holding that the plaintiff, as the suc-

cessor in interest of the Bingham Canyon & Camp Floyd Railroad Company, is entitled under the act of Congress just mentioned, to the *exclusive possession of the surface* of the lands in question, so long as it uses the same for railroad purposes.

In support of this we call attention to the following cases:

New Mexico v. U. S. Trust Co., 172 U. S. 171;

Nor. Pac. R. Co. v. Townsend, 190 U. S. 267;

Western Union T. Co. v. Pennsylvania R. Co., 195 U. S. 540, 570;

Oregon Short Line R. Co. v. Stalker, 95 Pac. (Idaho) 56;

Nor. Pac. R. Co. v. Myers-Parr Mill Co., 103 Pac. (Wash.) 453.

We respectfully submit that the decree of the lower court should be reversed and that this court should order a new decree to be entered adjudging the plaintiff to be the owner in fee simple of the premises in question.

WALDEMAR VAN COTT,
E. M. ALLISON, Jr.,
WILLIAM D. RITER,
Attorneys for Plaintiff in Error.

RIO GRANDE WESTERN RAILWAY COMPANY *v.* STRINGHAM.

ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

Nos. 4, 5. Submitted October 19, 1915.—Decided November 1, 1915.

A railway company brought suit to establish its title under the Right-of-Way Act of 1875 to certain lands in fee and the trial court found for defendant; on appeal the appellate court reversed with directions to enter judgment awarding the railway company a right of way; on the trial court entering such a judgment the railway company again appealed contending that according to the true effect of the Right-of-Way Act it had title in fee, but the appellate court affirmed the judgment as entered. On writs of error taken to both judgments, on separate writs, *held* that:

As the first judgment of the appellate court disposed of the case on the merits and left nothing to the discretion of the trial court it was final in the sense of § 237, Judicial Code, and the writ of error was rightly taken to that judgment, but not to the second judgment.

The right of way granted by the Act of 1875 is neither a mere easement, nor a fee simple absolute, but a limited fee made on implied condition of reverter in the event of non-user.

The judgment awarding to the railway company a right of way in the terms of the Right-of-Way Act used those terms with the same meaning they have in the act and accorded to the company all that it was entitled to.

38 Utah, 113, affirmed.

Writ of error to review 39 Utah, 236, dismissed.

THE facts, which involve the construction of the Railroad Right-of-Way Act of March 3, 1875, are stated in the opinion.

Mr. Waldemar Van Cott, Mr. E. M. Allison, Jr., and *Mr. William D. Riter* for plaintiff in error:

A railway company which complies with the act of Congress of March 3, 1875, acquires a title in fee simple, and not merely an easement or right of way. *New Mexico* v. *U. S. Trust Co.*, 172 U. S. 171; *Nor. Pac. R. R.* v. *Townsend*, 190 U. S. 267; *West. Un. Tel. Co.* v. *Pennsylvania R. R.*, 195 U. S. 540, 570; *Oregon Short Line* v. *Stalker*, 95 Pac. Rep. 56; *Nor. Pac. R. R.* v. *Myers-Parr Co.*, 103 Pac. Rep. 453.

There was no appearance, nor was any brief filed for defendants in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This was a suit to quiet the title to a strip of land claimed and used by the plaintiff as a railroad right of way under the act of March 3, 1875, c. 152, 18 Stat. 482, and to which the defendants asserted title under a patent for a placer mining claim. At the trial the facts were specially found and judgment for the defendants was entered upon the findings. In reviewing that judgment the Supreme

Court of the State, accepting the findings below, held that the plaintiff in virtue of proceedings had in the Land Department under the Right-of-Way Act while the land was yet public acquired a right of way two hundred feet wide through the lands afterwards embraced in the mining claim and that the defendants' title under the placer patent was subject to this right of way, and thereupon reversed the judgment and remanded the case with a direction to "enter a judgment awarding to the plaintiff title to a right of way over the lands in question one hundred feet wide on each side of the center of the track." 38 Utah, 113. Acting upon this direction the trial court vacated its prior judgment and entered another adjudging the plaintiff to be "the owner of a right of way" through the mining claim one hundred feet wide on each side of the center line of the railroad, declaring the plaintiff's title to such right of way good and valid, and enjoining the defendants from asserting any claim whatever to the premises, or any part thereof, adverse to the plaintiff's "said right of way." The plaintiff again appealed insisting that it was only adjudged to be the owner of a right of way when according to the true effect of the Right-of-Way Act it had a title in fee simple, as was asserted in its complaint. But the judgment was affirmed, the court saying (39 Utah, 236):

"If counsel for appellant thought that this court, in the prior opinion, did not correctly define and determine the extent of appellant's rights to the land in dispute, or did not fully safeguard its rights as defined and adjudged, they should have filed a petition for a rehearing. This they did not do. The conclusions of law and judgment having been drawn and entered in conformity with the decision of this court, we are precluded from further considering the case. The former decision became, and is the law of the case, and this court, as well as the litigants, are bound thereby."

Being in doubt which of the judgments of the appellate court should be brought here for review to present properly the question respecting the nature of its title, the plaintiff concluded to bring up both, each by a separate writ of error.

Manifestly the first judgment was final within the meaning of Jud. Code, § 237. It disposed of the whole case on the merits, directed what judgment should be entered and left nothing to the judicial discretion of the trial court. *Board of Commissioners* v. *Lucas*, 93 U. S. 108; *Bostwick* v. *Brinkerhoff*, 106 U. S. 3; *Mower* v. *Fletcher*, 114 U. S. 127; *Chesapeake & Pot. Tel. Co.* v. *Manning*, 186 U. S. 238. And as the question sought to be presented arises upon the first judgment—it being final in the sense of § 237—it is apparent that the writ of error addressed to the second judgment presents nothing reviewable here. See *Northern Pacific R. R.* v. *Ellis*, 144 U. S. 458; *Great West. Tel. Co.* v. *Burnham*, 162 U. S. 339; *Chesapeake & Ohio Ry.* v. *McCabe*, 213 U. S. 207, 214.

What the act relied upon grants to a railroad company complying with its requirements is spoken of throughout the act as a "right of way," and by way of qualifying future disposals of lands to which such a right has attached, the act declares that "all such lands over which such right of way shall pass shall be disposed of subject to such right of way."

The right of way granted by this and similar acts is neither a mere easement, nor a fee simple absolute, but a limited fee, made on an implied condition of reverter in the event that the company ceases to use or retain the land for the purposes for which it is granted, and carries with it the incidents and remedies usually attending the fee. *New Mexico* v. *United States Trust Co.*, 172 U. S. 171, 183; *Northern Pacific Ry.* v. *Townsend*, 190 U. S. 267, 271; *United States* v. *Michigan*, 190 U. S. 379, 398; *West. Un. Tel. Co.* v. *Pennsylvania R. R.*, 195 U. S. 540,

570. The judgment under review does not in words so characterize the plaintiff's right nor was it essential that it should do so. It describes the right in the exact terms of the Right-of-Way Act and evidently uses those terms with the same meaning they have in the act. So interpreting the judgment, as plainly must be done, we think it accords to the plaintiff all to which it is entitled under the act.

In No. 4 Judgment affirmed.
In No. 5 Writ of error dismissed.